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Circuit Court of Appeals

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For the Ninth Circuit.

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PACIFIC COAST COAL COMPANY, a corporation, et al. Claimants,

Appellants,

vs.

ALASKA STEAMSHIP COMPANY, a corporation, Owner of the American Steamship DENALI,

Appellee.

UNITED STATES OF AMERICA,

Appellant,

vs.

ALASKA STEAMSHIP COMPANY, a corporation, Owner of the American Steamship DENALI,

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Apostles on Appeals

In Twelve Volumes

FILED

VOLUME V

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Pages 1961 to 2464

PAUL P. O'BRIEN,
CLERK

Upon Appeals from the District Court of the United States for the Western District of Washington, Northern Division.

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(Testimony of Peter Albert Obert.)

Q. What did he say as to adjusting the compass, what he was going to do about it?

A. That was all he said.

Q. What was that?

A. That morning outside of Victoria, going out in the Straits, and I said, 'You didn't get the compass adjusted,' and he said, 'No, I didn't.' And that is the only conversation I had with him regarding the compass. I may have said she was a little off one way or the other.

Q. What do you mean by that?

A. I might have said to him something like this: 'I see she runs to the right a little,' or maybe 'That she runs to the left.' when I told him about the compass not being adjusted.

Q. When did you say that?

A. When we were off Race Rock."

Then a little further on, page 31:

"Q. Why did you say that she was running to the right or to the left?

A. I might have mentioned that. I don't remember. [1927] I may have said something, that she runs to the left or to the right. I don't remember. It was in that conversation when I said the compass had not been adjusted.

Q. Tell us just as you said it, how you remember having said it.

A. I said I might have said that.

(Testimony of Peter Albert Obert.)

Q. Is it your best recollection that you did say that?

A. I would not say. I will say that I might have said it. But I don't remember.

Q. There must have been something said, or else you would not have commented upon the fact that the compass was not adjusted.

A. A man doesn't remember what he says half of the time."

Mr. Long: In view of that I ask that the whole matter be stricken. The witness said that he didn't remember. Counsel was pounding at him, pounding at him, and pounding at him for hours here, and the Court should know the circumstances of this thing.

The Court: The Court has sufficient knowledge to rule as the Court feels the ruling should be made.

Mr. Long: I object on the ground of counsel's own statement. The witness says he doesn't remember, that he doesn't know anything about it.

The Court: Objection overruled.

Mr. Long: The testimony is put in his mouth by counsel.

Q. (By Mr. Ryan) ——(Continuing)——[1928]

"Q. Isn't it a fact that you must have observed something like that in this conversation or else you would not recall the statement that you made, 'I see you didn't have the compass adjusted,' Isn't that right?"

Mr. Long: Just a minute; you know very well that is not part of your question.

(Testimony of Peter Albert Obert.)

Mr. Ryan: Pardon me—just strike out those words.

Mr. Long: Counsel is deliberately trying to put a lot of things in here.

Mr. Ryan: I assure you there was nothing deliberate about that at all.

The Court: Strike the statement of Counsel Long and the statement of Counsel Ryan, the statement that Counsel Ryan deliberately inserted something in there.

Mr. Long: That is the reason, in anticipation of this very thing, that I made the objection to begin with, and Your Honor ruled in my favor.

The Court: The matter is being presented in accordance with the ruling of the Court. Proceed.

Mr. Long: Exception.

The Court: Exception allowed.

Q. (By Mr. Ryan—continuing) And a little later on:

“Q. You were on a ship you had never sailed on before,”——

Mr. Bogle: (Interposing) Where is this?

Mr. Ryan: Page 32.

Q. (Continuing):

“——and the compass had not been adjusted for at least a couple of years, and if the compass was [1929] running to the right or left,”——

Mr. Long: (Interposing) Just a minute; this is exactly the same thing.

(Testimony of Peter Albert Obert.)

Mr. Ryan: No, it is not. It is connected right up there with Capt. Healy.

The Court: If counsel cannot agree upon it the Court will hear it through, and if it does not turn out as counsel reading says it does, then it will have to be stricken.

Mr. Long: I understand, Your Honor, and I do not want to make these continuous objections, but after all I represent a client that has certain interests that I should protect, and, as I understand it, this line of questioning that counsel is reading in regard to this matter pertains to a conversation between this witness and Capt. Healy, an alleged conversation. Am I correct in that?

The Court: It refers to the compass or the compass adjustment.

Mr. Long: The conversation between the two gentlemen.

The Court: Well, whatever this witness said touching that matter, respecting the discussion had with Capt. Healy.

Mr. Long: The question counsel is about to read pertains to no discussion.

Q. (Continuing):

“Q. You were on a ship you had never served on before, and the compass had not been adjusted for at least a couple of years, and if the com- [1930] pass was running to the right or left, or something of that sort, so that you called the matter to the attention of the master

(Testimony of Peter Albert Obert.)

that the compass had not been adjusted, it would be a pretty serious thing?"

Mr. Long: May I make an objection?

Mr. Ryan: Wait a minute; this is connected up:

"A. It is not so very good, no.

Q. Why didn't you say that to Captain Healey before the ship left the dock, and not wait until she got off Victoria in Puget Sound?"

The Court: That part of it will be stricken, and the Court rules that you are not at liberty to introduce that in the case, the comments you are asking for. The opinion or reaction of this witness touching the mind or conduct of the Captain, is no part of this case.

Mr. Long: I think that should be stricken.

The Court: Yes; those matters relating to that subject.

Q. (By Mr. Ryan) Did you so testify or state, under oath, at the time and place, and under the circumstances, and in the presence of the persons I have stated to you?

Mr. Bogle: I take it, Your Honor, that question refers to everything that counsel has read.

The Court: Yes.

Mr. Bogle: It seems to me that is an unfair way to interrogate a witness. I cannot remember it all.

The Court: Objection overruled. If he can say whether he so stated, then he can answer the ques-

(Testimony of Peter Albert Obert.)

tion, and if he cannot so state he can answer that way, as to [1931] what he knows.

The Witness: I might have said something of it, but I do not remember all of it.

Q. Do you say you didn't say that?

A. I say I don't remember.

Q. Well, after you made that statement didn't Mr. B. F. Nelson type out a transcript from his stenographic notes and hand the original of that to you, in writing?

A. He came up to my house.

Q. Together with a copy of it?

A. He came up to my house.

Q. And asked you to make any changes or corrections you saw fit?

A. He did not.

Q. What did he say?

A. He came out to my house and wanted me to sign it, and that is all. I refused to. He says, "It will take some time before you read that through," and I said "I want to read it all." I refused to sign it. There was things there I don't remember ever saying, never mentioned.

Mr. Long: Go ahead and finish your answer.

The Witness: You were all talking at the same time, the way you had me up I guess I was not responsible for what I was saying all the time. I had just lost my license, and I didn't know what was up; I didn't know whether you were going to hang me or what it was.

(Testimony of Peter Albert Obert.)

Q. Did you when this typewritten transcript was given to you by Mr. Nelson make changes in it yourself, in the language that was there, in his presence? [1932]

A. I made no changes.

The Court: Call his attention to them.

Q. I call your attention, for instance, to one here, on page 7, which Mr. Nelson apparently initialed, where you made a change.

A. I made no changes.

Q. Do you swear that you made no changes in that typewritten transcript when Mr. Nelson showed it to you, and in his presence, is that right?

A. I certainly do.

Q. Did you read it through in his presence?

A. Not all of it.

Q. How much did you read through?

A. Oh, I don't know; about half of it, I guess.

Q. And you made certain corrections in the transcript, did you not?

A. I made no corrections at all.

Q. Did you say "These few words here are wrong", or "I wish to change them," is that right?

A. I don't see any.

Q. I just showed you one, for instance?

A. I didn't make that.

Q. You didn't ask him to strike out those words from the answer that you gave, as he had it recorded in his notes?

A. I asked him nothing.

(Testimony of Peter Albert Obert.)

The Court: Proceed.

The Witness: I simply refused to sign it.

Q. Did you state the substance of what I read to you at the time? And under the circumstances I have described?

A. I said nothing to Mr. Nelson. [1933]

Q. No; at the time, in the United States Attorney's office, under the circumstances?

A. I don't remember.

Q. And at the time described?

A. I don't remember.

Q. Did you state in substance what I read to you or not?

A. I don't remember.

Q. That is your only answer that you wish to make to that?

A. Yes.

Q. Do you say did not?

A. I say I don't remember.

Q. You will not say you did not, will you?—
What is your best recollection?

A. It is not at all.

Q. You have no recollection at all of it?

A. No.

Q. Well, you do have a recollection of being there and——

A. (Interposing) I certainly do, yes.

Q. And being asked questions, do you now?

A. Yes. You called me up and wanted me to come down, and I said I couldn't come down.

(Testimony of Peter Albert Obert.)

Q. I didn't call you up.

A. Mr. Pellegrini called me, and I told him I couldn't come down because I was doing a little work, dirty work, and he said "It is absolutely necessary that you come down, we will send a taxi for you." Well, I didn't know what was up, whether I was going to be hung or lose my license, or what it was, so I said "All right", and in a few minutes a taxi was out there.

Q. And then you came down to the office? [1934]

A. I came down to the office and you started after me.

Q. And before these persons you made certain statements, did you not, under oath, after being sworn by Gerald Shucklin, a Notary Public?

A. I don't remember.

The Court: I think that covers it now.

Mr. Ryan: Well, if the Court please, in view of the answer of the witness I would like to take this up in short questions and answers, so he can specify as to each one.

The Court: No. You can have the reporter read as much of your question as submitted as you wish, and ask him about it.

Mr. Ryan: Mr. Reporter, will you do that? Will you read the first question and answer that I read. And I ask you, Mr. Witness, whether or not you did make a statement under oath at that time and place, and before the persons described.

(Testimony of Peter Albert Obert.)

The Court: I think, however, the reporter cannot both read the questions and be stopped at the point where you would want to stop him.

Mr. Ryan: Just at the end of each question and answer.

The Court: The only thing is that it seems to me to be taking up so much time. The witness has already said that he doesn't remember having made some of those statements, or doesn't remember whether he did or not, he would not say that he did not make them. I do not see why that doesn't cover it, Mr. Ryan.

Mr. Summers: If the Court please, may I be heard? [1935]

The Court: Yes.

Mr. Summers: This witness may very well be able to state, in view of all the objections and all the arguments that were mixed up in this long question, that he doesn't remember it, but I am submitting this to the Court, that if counsel be permitted to read a short portion of that transcript and then ask the witness piecemeal if he did or did not so testify, that would be proper.

The Court: The question is taking up an inordinate amount of the time of the Court on this cross-examination about something which is calculated to go to the recollection of the witness, or to test his recollection, or possibly to impeach the witness. I wish you would try to pick out those most pertinent parts of it, and if you can confine yourself to that

(Testimony of Peter Albert Obert.)

method in doing that you can submit a few of them seriatim by dividing up the matter in parts. Try to do that as expeditiously as you can, without going over all the ground again.

Mr. Ryan: All right.

Q. (By Mr. Ryan) At that time, and under those circumstances, did you or did you not state as follows, in answer to the following question:

“Q. Captain, prior to the time that the ship sailed from Seattle, we have been informed that either Captain Healey or yourself requested the company to adjust or compensate the compasses.

A. I don't know about the request.

Q. They were not adjusted?

A. No. [1936]

Q. Did you discuss with Captain Healey that matter at that time?

A. I asked him about it.

Q. What did he tell when you said they had not been adjusted? Did he tell you they would be adjusted, or what?

A. No, he didn't say that either.”

Did you so make that statement?

A. No, sir.

Q. You did not?

A. I don't remember I ever did.

Q. Do you say you did not make the statement, or you don't remember?

A. I don't remember.

(Testimony of Peter Albert Obert.)

Q. Do you remember any part of the questions or answers that I have read to you?

A. Yes.

Q. All right.

A. I remember you asked me when we were off Victoria, and I said to Capt. Healy "You have got the old cards, the old deviation cards", and he says "Well, we got a new book here, we have got a deviation book."

Q. You never mentioned any new deviation book at any time when you were being asked about it at this time and place, did you?

A. Well, I wasn't asked about it.

Q. You don't think you were—all right—and you never mentioned any new deviation book on either of the occasions of which you testified before the Steamboat Inspectors, did you? That is, at either the investigation [1937] in May or June, 1935?

A. I wasn't asked by the Inspectors. The deviation book is always laid out. That is when I saw it; but as far as the adjustment of the compass, we never had any conversation.

Q. You never had a conversation with Capt. Healy about adjusting compasses?

A. No.

Q. Do you mean to say that?

A. Yes.

Q. Insofar as Mr. Nelson's notes, his stenographic notes are concerned, they are all false?

(Testimony of Peter Albert Obert.)

A. I don't know.

Q. Are they false or not?

A. I don't know.

Q. You just have no memory on it, is that it?

A. I don't know.

Q. At that time, and under those circumstances, did you or did you not state, under oath, before those persons, at that place, as follows:

“Q. What was the deviation on the compass, if you know?

A. Well, she averaged from 1½ to 2½ degrees. That is not quite a quarter of a point; that is on the course we were going, West Northwest. It may have been more to the North, or East or South.

Q. Did you or any of the other officers on the boat do anything at all to adjust or compensate the compass?

A. Not myself. The second mate and the third mate [1938] took bearings to find out what variation or deviation she did have.”

Did you so testify or state that, under oath?

A. Yes, sir; they always do.

Q. Yes, but the questions and answers I have read, you heard them, and you answered them as I read them, did you? Your answer is “Yes”, is it?

A. Yes.

Q. At that time and place, and under those circumstances were you asked the following questions,

(Testimony of Peter Albert Obert.)

and did you give the following answers, pages 5 and 6:

“Q. You had no conversation with Captain Healey regarding that?

A. In regard to the compass?

Q. Regarding the compass working badly before the ship left Seattle?

A. I don't remember. I might have said she should have been adjusted; that she had too much deviation; something like that.”

Did you make that statement or not?

A. I don't know anything about the ship before she left Seattle. I was not on board of her. I just got aboard the ship that night before she sailed.

Q. Did you make that statement or not, at that time and place, and before those persons?

A. No, sir.

Q. You did not make it? This one you remember; you did not make it, is that correct?—You deny it?

A. How could I?

Q. But you deny it, don't you? [1939]

A. Yes, I do.

Q. That particular one. Now, you read that part of the transcript over, and you supposedly made that statement, didn't you? That was on page 6 of your statement.

Did you read it over in Mr. Nelson's presence?

A. Not all of it.

(Testimony of Peter Albert Obert.)

Q. But didn't you read it as far as page 6?

A. I don't remember that.

Q. Pages 5 and 6?

A. I don't remember that.

Q. How far did you read through it?

A. Oh, about half of it, something like that.

Q. Well, the statement is fifty-seven pages long, so you read at least as far as pages 5 and 6, didn't you?

A. Maybe I did.

Q. Did you say to Mr. Nelson that any of those questions and answers were wrong?

A. I said nothing to Mr. Nelson, only I refused to sign it, that is all I said to him.

Q. You say you said nothing to Mr. Nelson, except that you refused to sign it, is that correct?

A. Yes, sir.

Q. You have a clear memory on that?

A. I certainly have.

The Court: Proceed.

Q. (By Mr. Ryan) At that time and place did you make this statement under oath, page 6:

“Q. Just what words did you use and what words did Captain Healey use in your discussion with him about the adjustment of the compasses before the [1940] ‘Denali’ sailed on this voyage?

A. We sailed in the night or early in the morning, and we were going out in the Straits,—I think it was some time before we

(Testimony of Peter Albert Obert.)

got out in the Cape, or around Flattery, I asked him if he was going to have the compass adjusted, and he said he didn't get it adjusted.

Q. Why did you say that?

A. Because I happened to notice in the chart room the old cards from 1933, and that the cards were old, and there should be some new cards,"——

Did you so state under oath at that time and place, to those persons?

A. I told them that.

Q. You did?

A. Yes.

Mr. Long: I request that counsel read to the Court the remainder of that same answer, that he deliberately hasn't read.

Mr. Ryan: That is the part I said was stricken out.

Mr. Long: Who struck it out? This witness said he didn't strike it out.

The Court: Objection overruled, and the request to the Court at this time, or to the witness, is denied.

Q. (By Mr. Ryan) At that time and place, and to those persons, did you make the following statement under oath, at page 7:

“Q. At the time the ‘Denali’ sailed from Seattle, you didn't know the deviation of the compass on the headings or courses? [1941]

A. I didn't know exactly how much she had.

(Testimony of Peter Albert Obert.)

Q. You didn't swing the ship to determine that, did you?

A. No."

Did you so state under oath?

A. I didn't swing the ship.

Q. Did you so state under oath as I have read the questions and answers, at that time and place, and to those persons?

A. I couldn't. I wasn't aboard before she left.

Q. Do you deny that you made those statements in answer to those questions?

A. I don't remember anything about it.

Q. So you do not deny it?

A. I don't remember it.

Q. At that time and place, and to those persons, did you make the following statement under oath, page 7:

"Q. And that, according to the usual practice, is done by the compass adjuster?

A. By Max Kuner"—

Mr. Long: (Interposing) Just a minute, that has nothing to do with any conversation; this is counsel's statement about who adjusts compasses in Seattle, and I submit it has nothing to do with a conversation with Capt. Healy.

Mr. Ryan: It is all a part of it, and the Court has already ruled.

The Court: You may lay the foundation, in order to avoid doubt about it. Lay the foundation for it.

(Testimony of Peter Albert Obert.)

Q. (By Mr. Ryan) You did not swing the ship to determine the deviations of the compasses on the "Denali", did you? [1942]

A. I did not.

Q. And that, according to the usual practice, is done by the shore compass adjuster, isn't it?

A. Yes, sir.

Mr. Long: I ask that counsel be required to read the next question.

Mr. Ryan: That is admitted, he has testified to the fact now. Why contradict him?

Mr. Long: I submit the Court should have the benefit of all of it, if he is going to read part of it.

The Court: Counsel can redirect on any matter that is not considered by counsel for the Claimants.

Mr. Long: I cannot keep up with him; he is all over the place here.

The Court: Proceed.

Q. (By Mr. Ryan) How often do you, as a master mariner, think compasses should be adjusted on a vessel that is laid up every winter, like the "Denali"?

Mr. Long: That is an improper question, Your Honor, on cross-examination. That was not gone into on direct examination at all.

Mr. Ryan: They examined this man about compasses and deviations, and all that sort of thing.

The Court: I do not recall what question was asked, but if you recall, Mr. Ryan——

Mr. Summers: (Interposing) Yes, Your Honor; with respect to the custom they asked

(Testimony of Peter Albert Obert.)

whether or not it was customary for a vessel to have deviation cards as old as two years, or 18 months, and they asked this man what was the universal custom with respect to the adjust- [1943] ment of compasses. They have gone into this question by this witness on direct examination.

Mr. Long: No mention was made of compass adjustment, and I submit the record will so indicate.

The Court: What is the question you seek to ask him now? Read the question. (Question read as follows:

“Q. How often do you, as a master mariner, think compasses should be adjusted on a vessel that is laid up every winter, like the ‘Denali’?”)

Mr. Long: I object to that as improper cross-examination, Your Honor.

The Court: Objection overruled.

Mr. Long: Exception.

The Court: Exception allowed.

Mr. Ryan: Will you answer the question?

Mr. Long: Read the question to the Captain.

Mr. Ryan: The witness has not said he doesn't understand it.

The Court: Do you remember the question?

The Witness: How often it should be? Well, I should say every year, or oftener, if it is necessary, if the master finds anything wrong with it, anything unusual, he should have them adjusted every year. [1944]

(Testimony of Peter Albert Obert.)

Q. Has it or has it not been the custom in Seattle for compasses on a vessel that is laid up every winter like the "Denali" to have them adjusted in the spring?

Mr. Long: That is the same objection, Your Honor. There is no testimony about custom here.

The Court: Objection overruled.

Mr. Long: Exception.

The Court: Exception allowed.

A. I don't know anything about the customs unless we find something wrong—something unusually wrong with them.

Q. (By Mr. Ryan) At the time and place, and to the persons that I have described, in the United States Attorney's office on that occasion did you or did you not state under oath as follows:

"Q. How often do you as a master mariner think compasses should be adjusted on a vessel that is laid up every winter like the 'Denali'?"

A. Well, the custom is to have the compasses adjusted in the spring.

Q. That has always been the practice in the Seattle Harbor?

A. That is the custom".

Did you or did you not so state under oath?

A. Maybe I did.

Q. Your best recollection is that you did, is it?

A. Yes. If there is anything wrong with them—anything unusually wrong.

(Testimony of Peter Albert Obert.)

Q. Yes. But you didn't say anything about anything being wrong in that answer at that time, did you?

A. Well, I should have said it.

Mr. Long: Did you have an opportunity to state it, Captain? [1945]

The Court: Well, you can redirect him on that and connect it up more closely if you think it is necessary.

Q. (By Mr. Ryan) At the time and place and to the persons I have described, in the United States Attorney's office in Seattle, did you or did you not—were you asked the following question and did you make the following answer:

“Q. Your own opinion is that the compass on the ‘Denali’ should have been——”

Mr. Bogle: (Interposing) What page?

Mr. Ryan: At page 11.

Q. (By Mr. Ryan)

“Q. Your own opinion is that the compass on the ‘Denali’ should have been adjusted before she went on this last voyage?

A. Yes, it should have been. Yes.”

Did you so state under oath?

A. I don't remember that.

Q. Do you deny that you did state that under oath at that time?

A. I say that I don't remember.

Q. Your only answer is that you don't remember, is that right?

(Testimony of Peter Albert Obert.)

A. Yes, sir.

Q. Now, at that time and place, to those persons in the United States Attorney's office in Seattle did you—were you asked the following questions and did you give the following answers under oath.

Mr. Bogle: What page?

Mr. Ryan: Pages 14 and 15.

Q. (By Mr. Ryan)

“Q. You were steering northwest?

A. North, directly, for fifteen minutes from the north end of [1946] Vancouver Island.

Q. Are you sure there is an entry in the compass book of an azimuth taken by you when you were steering those few minutes?

A. Not by me.

Q. How do you know it was taken by anybody?

A. Because we always do when we have a chance.

Q. As a matter of fact, you don't know whether any azimuth was taken?

A. I know there was one taken.

Q. On this voyage?

A. Because I asked the captain to get one.

Q. When?

A. When I got off watch I asked the captain to take one.

Q. You asked the captain to take an azimuth?

A. Yes.

(Testimony of Peter Albert Obert.)

Q. What day was that?

A. On the 17th.

Q. Then you think that he took one and put it in the compass book?

A. I think the second mate took it for him. He was a good navigator”.

Did you or did you not so state under oath?

A. Yes, I did. I didn't ask the captain. I asked the second officer, which he did.

Q. But at that time you stated under oath that you asked the captain to take an azimuth and you asked him that on the 17th, didn't you?

A. On the 17th, yes.

Q. Yes. Now——

A. (Interposing) Not the captain.

Q. (By Mr. Ryan) Now——

The Court: (Interposing) Pardon me. He wants to say something else. What is that that you want to say, Captain?

The Witness: I didn't ask the captain. I asked the second officer.

The Court: The point is whether or not you stated [1947] as he read on the occasion in question.

Q. (By Mr. Ryan) On the occasion in question did you say that you stated under oath that you asked the captain to take an azimuth?

A. If I did, I didn't mean to. The second officer did.

Q. Is your recollection as good now as it was at the time that you made this statement under oath?

(Testimony of Peter Albert Obert.)

A. I think so.

Q. You think it is?

A. Yes, sir.

Q. You don't think that your recollection was better at that time than it is now?

A. I don't think so.

Q. That was a long while ago, wasn't it?

A. Oh, not so very long ago.

Q. Who was the navigating officer of the "Denali"?

A. The second officer.

Q. Was the navigating officer on the bridge while you were on watch between midnight and 6:00

A. M. on May 18, 1935?

A. The captain was on the 6:00 to 12:00 watch.

Q. Was he there after midnight? That is, was he on there during your watch at any time from midnight to 6:00 A. M. on May 18th?

A. No.

Q. You shake your head. Do you mean to say no?

A. I say, "No."

Q. You are positive about that?

A. Yes, sir.

Q. Was he in the chart room during your watch at any time between midnight and 6:00 A. M. on the 18th of May, 1935? [1948]

A. He may have been. Lots of times he comes in on somebody else's watch.

(Testimony of Peter Albert Obert.)

Q. But this night, do you recall his being there this night—that is the night that the ship stranded? You recall that night quite well?

A. Yes.

Q. Now, was he there during your watch on this night that the ship stranded?

A. Not that night.

Q. Where were you on that night, from shortly after midnight on May 18th to 6:00 A. M. on May 19th?

A. I was on watch.

Q. Were you in the chart room?

A. I must have been, or in the pilot house.

Q. Did you see the second officer there after midnight?

A. Not at that time.

Q. At the time and place and in the presence of these persons that I have described, in the United States Attorney's office in Seattle, did you state under oath as follows:—

Mr. Bogle: (Interposing) What page?

Mr. Ryan: Page 16.

Q. (By Mr. Ryan)

“Q. How did you know what the deviation was on the north course?

A. I just told you that. That two and a half degrees was found.”

Did you or did you not so state under oath?

A. No, I don't remember making such a statement.

Q. Do you deny that you made that statement?

(Testimony of Peter Albert Obert.)

A. I don't remember.

Q. You don't deny it?

A. No, I don't remember ever making such a statement. [1949]

Q. Did you further state under oath at that time and place, and to those persons in the United States Attorney's office in Seattle, as follows:

“Q. Just with one azimuth taken, without any other bearing being taken, would you think that a mariner would be justified in relying on that definitely showing the deviation on that heading?

A. Just one?

Q. Yes.

A. I would not rely on it”.

Mr. Bogle: Where is that?

Q. (By Mr. Ryan) Did you or did you not so state under oath?

Mr. Bogle: What page is that?

Mr. Ryan: 18 and 19.

A. I don't remember that.

Q. (By Mr. Ryan) Do you deny that you made that statement under oath?

A. I say I don't remember that.

Q. You don't deny that you made that statement, do you?

A. I say I don't remember making any such statement.

Q. But you don't deny it?

A. I don't remember.

(Testimony of Peter Albert Obert.)

Mr. Long: Your Honor, we are going far afield of Your Honor's ruling. May it be understood that we may read all the rest of this into the record on this one thing?

The Court: The understanding is that if there is one verb or noun or pronoun, or period or comma or answer that you wish to call the witness' attention to, indicating a more complete answer, the Court will give you the opportunity to call the witness' attention [1950] to that.

Mr. Long: Then do I understand that we will have an opportunity to read such parts of this record into the record as we may want to read?

The Court: Well, it all depends whether it is pertinent or not.

Q. (By Mr. Ryan) At that time and place, in the United States Attorney's office in Seattle, as I have described, did you not make the following statement under oath—

Mr. Long: What page?

Mr. Ryan: Pages 19 and 20.

Q.

“Q. You used two charts or just one?

A. We always compare them.

Q. Which chart would you use?

A. Both of them.

Q. What was the number of the Canadian chart?”

I may say, if Your Honor please, that there was a Canadian chart and an American chart mentioned earlier in an earlier question.

(Testimony of Peter Albert Obert.)

The Court: Yes, and also referred to on the direct examination.

Mr. Ryan: Yes.

The Court: There was some chart referred to on the direct examination.

Mr. Long: Yes, there was a chart referred to, but it was not a Canadian chart.

Mr. Ryan: You referred to two charts.

Mr. Long: Yes, and they were both American charts.

Mr. Ryan: We will show you what you were referring to.

Mr. Long: To that I have no objection. [1951]

Mr. Ryan: We will refer you to the charts that you actually have.

Q. (By Mr. Ryan)

“Q. You used two charts or just one?”

A. We always compare them.

Q. Which chart would you use?

A. Both of them.

Q. What was the number of the Canadian chart?

A. I don't remember the number.

Q. What was the number of the United States chart?

A. I am not sure. I think it was 8920.

Q. What was the title or name of the United States chart?

A. Part of Dixon's Entrance and Brown Passage.

(Testimony of Peter Albert Obert.)

Q. What was the title of the Canadian chart?

A. Same thing. Entrance to Dixon, or Dixon Entrance and Brown Passage.

Q. The United States chart that you used on that particular voyage, when was that chart bought and put on the ship?

A. She had a brand new set of charts on this voyage.

Q. Did you buy them?

A. They were ordered from the office and the second mate brought them onto the ship. She had some old charts, and brand new charts, and harbor charts as well.

Q. You think the charts of part of Dixon Entrance and Brown Passage were new charts, or, rather that that chart was a new chart, and that that chart has been saved, and that the company has it?

A. I think so."

The Court: Now connect it up and ask him——

Mr. Ryan: (Interposing) All right.

Q. (By Mr. Ryan) Did you or did you not so state under oath?

A. Yes, sir.

Q. Did you or did you not state under oath at that time and place, and to those persons in the United States Attorney's [1952] office in Seattle,

“Q. How about the Canadian Government chart?

(Testimony of Peter Albert Obert.)

A. I don't think they have that.

Q. Do you know when it was bought?

A. It must have been a couple of days before the ship sailed.

Q. You don't know that?

A. No."

Did you or did you not so state under oath?

A. I don't remember saying that about the Canadian chart.

Q. Do you deny that you so stated that under oath?

A. Of course she had Canadian charts as well as American charts.

Q. Well, did you so state under oath as I have read it?

(Witness does not answer)

Q. Do you deny it, or do you just don't remember it?

A. I don't remember it. The ship, she had a set of charts from San Diego to Bering Sea—a small scale and large scale, besides any amount of harbor charts.

Q. Well, there is a well known chart on small scale published, 8102, is there not?

A. Yes, sir.

Q. And that is the one——

A. (Interposing) That is a large scale.

Q. Well, if you want to call it a large scale, all right. This is the one that the purser saved, and it is here from the "Denali", isn't it (indicating)?

(Testimony of Peter Albert Obert.)

Mr. Long: I suggest that you should let him see it, counsel.

The Court: Yes, let him see it. It is the one that was creased or folded in the middle, is it?

Mr. Ryan: Yes.

The Court: And that is the one that counsel now [1953] has in his hands?

Mr. Ryan: Yes.

Q. (By Mr. Ryan) This is a chart of that area, is it not, 8102 (showing chart to witness)?

A. Yes. That is a chart.

Q. Was that chart on board the "Denali" when she sailed on that voyage?

A. Yes, sir; absolutely.

Q. And what is this rubber stamp down here—what does that rubber stamp down here mean, down here at the bottom?

A. April 15, 1935.

Q. What does that stamp mean?

A. Well, that is when it was issued.

Q. Yes.

A. They are all alike. There is no difference. The triangulation is the same on all of them, and the soundings and the contour of the land.

Q. Now, in view of the fact that your recollection has been refreshed here by some statements that you made, and that you admit that you made on previous occasions—

Mr. Long: If Your Honor please, I object to that. Let counsel ask him questions.

(Testimony of Peter Albert Obert.)

Mr. Ryan: I will strike that.

Mr. Long: Ask him questions, if you want to ask him anything.

The Court: That is withdrawn.

Mr. Ryan: Strike that out. I will withdraw that. Is your Honor going to adjourn right now? I will bring this thing to a close in just a few minutes.

[1954]

The Court: Well, very likely you are just about finished with the cross, and maybe we can go ahead with something else tomorrow.

Mr. Ryan: Oh, this is only just cross examining him on previous inconsistent statements, Your Honor. I have considerable cross examination yet of this man. He is the officer on watch at the time of the stranding.

The Court: Well, the Court is adjourned until ten o'clock tomorrow in the forenoon.

(Whereupon an adjournment was taken at 4:30 o'clock P. M., November 3, 1937, to 10:00 o'clock A. M., November 4, 1937.) [1955]

November 4, 1937,
10:00 o'clock A. M.

Court convened pursuant to adjournment;

All parties present.

The Court: Any ex parte matters? If not, we will proceed with the trial. As I understand it, counsel for the claimants wish to insert two extra pages in their trial brief.

(Testimony of Peter Albert Obert.)

Mr. Summers: That is right, Your Honor.

The Court: I have those before me and that will be done. You may proceed with the case on trial. Captain Obert is on the stand. Come forward, Captain, and resume the stand.

PETER ALBERT OBERT,

resumed the stand for further examination.

Mr. Bogle: If Your Honor please, in view of what transpired yesterday, on behalf of the petitioner at this time I make a demand that they produce, in connection with the examination of this witness, the statement which Mr. Pellegrini stated in open court yesterday he took from this witness on an occasion prior to the one referred to by Mr. Ryan. I think that we are entitled to the other statement as well as this for the purpose of examination.

Mr. Ryan: Mr. Pellegrini doesn't happen to be here, but I have never seen any such statement.

The Court: That is not clear in my mind, Mr. Bogle, as to what you refer to. [1956]

Mr. Bogle: Mr. Pellegrini in stating to Your Honor the circumstances under which Captain Obert was called to the United States Attorney's Office yesterday, stated that he had previous to that occasion called Captain Obert into his office and had taken a statement. Then he had a request to make a further investigation, and on that occasion he called him in again and at that time he took the

(Testimony of Peter Albert Obert.)

statement that Mr. Ryan referred to yesterday. I think he has taken two statements from the witness, and we are entitled to have the first statement before us in connection with this examination. If Mr. Pellegrini is not here, I am willing to defer that request and demand until he is here.

The Court: Very well.

Mr. Ryan: I am quite sure that Mr. Pellegrini didn't say that he took any statement the first time. If he did, I have never seen it, and I don't believe that there is one.

The Court: The Court will not undertake to dispose of something that is not before the Court.

Mr. Bogle: I might say that Mr. Pellegrini's statement to that effect appears on pages 1402 and 1403 of the record.

Mr. Ryan: May I look at it?

(Mr. Bogle shows transcript to Mr. Ryan.)

Mr. Bogle: Didn't he make that statement?

Mr. Ryan: So far as I know he never took anything in writing or anything of that sort at all.

The Court: The Court will consider it upon further [1957] request when Mr. Pellegrini is present.

Mr. Bogle: Yes, Your Honor. That is all right.

The Court: You may proceed. Before proceeding with your examination, in connection with this addition to claimants' brief, I would like to say to all counsel that the Court would welcome any further authorities which you may have on the subject. There was a case of somebody against Romaine

(Testimony of Peter Albert Obert.)

that was cited by counsel for the claimants. It was a case appealed from Judge Neterer, and the Circuit Court of Appeals wrote the opinion—the opinion in that case was written by Judge Gilbert. Mr. Summers I think has called attention to it in connection with—he and Mr. Ryan presented that as an authority for the subject then in hand. Any further authorities which counsel—all counsel—any counsel can give the Court on that subject will be welcomed by the Court.

Now you may proceed, Mr. Ryan.

Further Cross Examination

By Mr. Ryan:

Q. On proceeding from the fix off Triple Island Light on the course North $\frac{3}{4}$ West, as you have laid it out on Petitioner's Exhibit 33, Chart 2828, what would happen if you had westerly deviation on your compass?

A. I had no westerly deviation.

The Court: Read the question.

(Question read)

The Court: Now that question assumes—it is conditioned that you did have such a deviation, and [1958] that being so what would be the effect?

The Witness: I would be running her ashore.

Q. (By Mr. Ryan) On this reef where the——

A. (Interposing) No, sir. I would be running her ashore on Prince Lebo Island.

(Testimony of Peter Albert Obert.)

Q. The effect of westerly deviation is to throw the ship's head to the west, or left, is it not?

A. No.

Q. Your answer is "Yes"?

A. To the right.

Q. The effect of the westerly deviation is to throw the ship's head to the left, is it not?

A. Into the shore. I was not figuring so much on deviation. I was figuring on the current.

Q. Wait a minute. Isn't the effect of westerly deviation to throw your ship's head to the left—ship's bow?

A. To the right.

Q. Are you sure about that?

(Witness does not answer.)

Q. Well, what happens to the course that you are trying to make good if you have westerly deviation?

A. On the course that I was trying to make good——

The Court: (Interposing) Just answer this question; not what you were trying to do then and there, on that occasion when you were navigating this vessel, but this question has a condition in it. Read it, Mr. Reporter.

(Question read as follows:

“Well, what happens to the course that you are trying to make good if you have westerly deviation?”) [1959]

(Testimony of Peter Albert Obert.)

A. She is setting to the right.

Q. (By Mr. Ryan) It would throw you off your course at any rate, wouldn't it?

A. Yes, sir; if she had any.

Q. If she had any?

A. Yes, sir.

Q. In the United States Attorney's office on August 2, 1935, before Assistant United States Attorney Pellegrini and the other witnesses that I have described to you on that occasion—you recall generally the circumstances, do you not, Captain?

The Court: Which was stated to you yesterday.

Q. (By Mr. Ryan, continuing) Which was stated to you yesterday. Did you or did you not state under oath as follows—

Mr. Bogle: (Interposing) What page?

Mr. Ryan: At pages 27 and 28.

Q. (By Mr. Ryan):

“Q. The deviation that would throw your ship farther westward than you contemplated would be what kind of a deviation, westerly or easterly?

A. Westerly.

Q. If there were greater westerly deviation of your compass than you expected or knew about, then that would account for your being thrown farther on this reef, wouldn't it?

A. If it was more than I knew about, yes”.

The Court: Now, ask the question. [1960]

Q. (By Mr. Ryan) Did you or did you not so state under oath?

(Testimony of Peter Albert Obert.)

A. I cannot say yes or no to that because I don't remember.

Q. Do you deny that you stated it?

A. I cannot say yes or no, because I don't remember making such a statement.

Q. Is that answer as I have read it to you true or false according to the facts?

A. I cannot answer yes or no. I cannot remember.

Q. What?

A. I cannot remember.

Q. Well, I am not asking you now to remember. I am asking you the straight question. "The deviation that would throw your ship farther westward than you contemplated would be what kind of a deviation, westerly or easterly"?

The Court: And his answer then was what?

Q. (By Mr. Ryan) His answer then was "Westerly". Now, what is your answer now.

A. No.

Q. You say that—the westerly deviation would throw your ship's head to the right, is that right?

A. Yes, sir.

Q. "Q. Now, if there were greater westerly deviation of your compass than you expected or knew about, then that would account for your being thrown farther on this reef, wouldn't it?" And your answer then was, "If it was more than I knew about, yes".

Now, what is your answer now? [1961]

(Testimony of Peter Albert Obert.)

A. I knew what it was.

Q. What is your answer now to that question?

A. Well, I cannot say yes or no to that question because I don't remember what I did say. You had me so befuddled up there that I don't remember what I did say.

The Court: Now, let the reporter read the interrogation involved at this point.

(Question read as follows:

“ ‘Now, if there were greater westerly deviation of your compass than you expected or knew about, then that would account for your being thrown farther on this reef, wouldn't it?’ And your answer then was, ‘If it was more than I knew about, yes.’ Now, what is your answer now?’”)

A. I don't remember.

The Court: Well, what is your answer now to the question, the question being again put to you at this time. What is your answer?

A. Well, I don't remember.

The Court: Read that question again. That question part and not the answer.

(Question read as follows:

“ ‘Q. Now, if there were greater westerly deviation of your compass than you expected or knew about, then that would account for your being thrown farther on this reef, wouldn't it?’ Now, what is your answer now?’”)

(Testimony of Peter Albert Obert.)

A. No, sir.

Q. Why not?

A. Because it would throw me to the right, wouldn't it?

The Court: He is asking you; you are not asking him. [1962]

Q. (By Mr. Ryan) I am asking you. You say——

A. (Interposing) It would throw me to the right farther.

Q. Then if you had deviation on the compass of the "Denali" it would throw your ship's head to the left or westward?

A. But I didn't have——

Q. (Interposing) Wait a minute until I finish the question.

A. All right.

Q. I will ask you again, so that you will get it clearly. If you had deviation on the compass of the "Denali" such as to throw your ship's bow or head to westward, or the left, then if you were steering a course from this fix off Triple Island North $\frac{3}{4}$ West you would actually be making a course over the ground towards this reef on which the "Denali" stranded, isn't that so?

A. No, sir.

Q. Why not?

A. It would put me over on the starboard shore instead of over the reef.

(Testimony of Peter Albert Obert.)

Q. I am not asking you about easterly deviation or westerly deviation. I am asking you about the kind of deviation that would throw your ship's head to the westward or left.

A. It would throw me to my right if I had any.

Q. Suppose your ship's head would be thrown to your left when you are steering, do you mean to say that you would go to the right?

A. Sure.

Q. All right. Well, suppose you had such an error in your [1963] compass but when steering a course North $\frac{3}{4}$ West you were actually going over the ground to the westward of that course, you would go on this reef, wouldn't you?

A. No, sir, I wouldn't go on the reef.

Q. Why not?

A. Because I would hit the starboard shore before I would come to the reef—before I got there.

Q. Now, Captain, you laid down—do you understand the question—I am asking you to assume that you have such an error of your compass so that you are being thrown to the westward.

A. But I had no error on the compass.

Q. I am asking you to assume that you had. If you did have that then you would—instead of going North $\frac{3}{4}$ West over the ground, or North by West $\frac{1}{8}$ West over the ground, you would be going right toward that reef, wouldn't you?

A. If I was steering North by West $\frac{1}{8}$ West I might have been over there, yes, sir.

(Testimony of Peter Albert Obert.)

Q. All right. If you were steering a course North by West $\frac{1}{8}$ West from this fix off Triple Island—

A. (Interposing) Yes.

Q. (Continuing) —and if you had three-eighths of a point deviation—westerly deviation—wouldn't the "Denali" have headed right for that reef where she did strand?

A. I would have been outside of the island.

Q. On which side of the island?

A. On the outside of it—on the ocean side.

Q. You mean you would have been to the west of Zayas Island? [1964]

A. Yes, sir.

Q. You say that a westerly deviation of three-eighths of a point on this course North by West $\frac{1}{8}$ West would be sufficient to throw you clear over to the west of Zayas Island, is that it?

A. Deviation or no deviation, if I had steered North by West $\frac{1}{8}$ West I would have been outside of the island—to the west of it on that night.

Q. Well, now, assuming for the purpose of argument that there is no current—that there is no tidal current at all. Just assume that. Assume that there is no tidal current setting you to the westward at all. Under those circumstances if you steered a course North by West $\frac{1}{8}$ West from this fix off Triple Island, and if you had three-eighths of a point westerly deviation, the "Denali" would have run on that reef just as she did on that night, wouldn't she?

(Testimony of Peter Albert Obert.)

A. No. She would have been on the starboard shore or over on the island.

Q. Well, if she had easterly deviation of three-eighths of a point she would have gone right on the reef, the way that you have described, wouldn't she, on this night, isn't that right?

A. I was not allowing for any deviation. I was allowing for the current.

Mr. Ryan: Read the question.

The Witness: That is why I steered three-quarters.

Mr. Ryan: Read the question. That is not an answer, Captain. I will have it re-read to you.

(Question read as follows:

“Well, assuming for [1965] the purpose of argument that there is no current—that there is no tidal current at all. Just assume that. Assume that there is no tidal current setting you to the westward at all. Under those circumstances if you steered a course North by West $\frac{1}{8}$ West from this fix off Triple Island, and if you had three-eighths of a point westerly deviation, the ‘Denali’ would have run on that reef just as she did on that night, wouldn't she?”)

A. No, sir.

Q. Why not?

A. Because she would be over on the starboard shore.

Q. Well, this time I asked you if she had easterly deviation instead of westerly, and you say that your answer would be just the same, do you?

(Testimony of Peter Albert Obert.)

A. One degree westerly deviation she had on that track, which is nothing on a short course.

Q. Do you understand the question?

A. I understand it perfectly.

Q. You understand it? I am asking you now about easterly deviation of three-eighths of a point.

A. I was not allowing easterly deviation.

Q. Do you understand that I am asking you to assume that there was easterly deviation?

A. I am not assuming anything.

Q. What is compass deviation?

A. To get deviation from the compass—from the sun—take a bearing.

Q. What is it?

A. Taking an azimuth. [1966]

Q. What does it mean; not how you make it, but what is it when you have gotten it?

A. You apply it to the compass if you have any deviation.

Q. But when you have it what is the effect on the compass that they call deviation?

A. You must allow it in the compass and in the steering, must you not?

Q. Well, don't you know what deviation of a compass is?

A. You allow it easterly to the left and westerly to the right.

Q. Why do you make that allowance?

A. In order to make the track good.

(Testimony of Peter Albert Obert.)

Q. Because the compass has a tendency to set away from the Magnetic North Pole, isn't that right?

A. Surely.

Q. Is that right?

A. Surely.

Q. What is your compass error—your total compass error as it is called?

A. What is it?

Q. Yes.

A. Deviation? What was it on this occasion—

Q. (Interposing) No, no. What is the compass error?

A. Well, it is the deviation that you have on the compass, isn't it?

Q. I see. Well, what is variation?

A. Well, I am not talking about that at all now.

Q. What?

A. Well, I am not talking about that now.

Q. Well, what is variation? [1967]

A. I don't know.

Q. You don't know what variation is?

A. That is what you allow when you correct a compass. That is variation.

Q. You don't know what it is, however?

A. I say that is what you allow when you correct a compass.

Q. Variation is?

A. Yes, sir.

Q. What allowance do you make for variation?

(Testimony of Peter Albert Obert.)

A. Whatever you have.

Q. How do you know what you have?

A. I didn't allow anything. I didn't take any bearings. The second mate and the third officer were taking the bearings—the second officer and the third officer were taking the bearings. [1968]

Q. How do you find out what the variation is?

A. By using the azimuth mirror. You have the variation on the chart.

Q. Oh, you have it on the chart?

A. Every chart has it.

Q. Every chart has the variation—all right; what was the variation at the place where the "Denali" was?

A. I don't remember what that was.

Q. What is the westerly deviation?

A. That is what you get, you get easterly or westerly; sometimes you get easterly and sometimes you get westerly.

Q. What is the westerly deviation?

A. That is when the ship has so much variation—runs her to the left or right.

Q. Runs how, when you have a westerly deviation?

A. You allow to the right.

Q. Doesn't it depend on what you have to start with? For instance, suppose you lay out a track on the chart and that gives you your magnetic course, doesn't it?

A. Certainly.

(Testimony of Peter Albert Obert.)

Q. That is your magnetic course. Now, the angle between that and the course your compass is steering is your deviation, isn't it?

A. Certainly.

Q. Suppose you have this magnetic course, you have laid the pencil line down on the chart, and there it is, your magnetic course, and now you want to find out—say you have four degrees westerly deviation?

A. No, sir.

Q. But suppose you had; assume you had, how do you know [1969] what compass course to steer in order to make good that magnetic course of, say, North $\frac{3}{4}$ West?

A. Well, the compass course, you apply it the other way.

Q. What course would you steer by compass if you knew you had four degrees westerly deviation, and you wanted to make good a magnetic course of North $\frac{3}{4}$ West?

A. About North $\frac{7}{8}$ West.

Q. North what?

A. North $\frac{7}{8}$ West.

Q. You would steer North $\frac{7}{8}$ West, you are sure about that?

A. Yes, sir.

Q. If you had four degrees easterly deviation on your compass, and you laid down a course on the chart of North $\frac{3}{4}$ West magnetic, what course would you steer in order to make good that magnetic course of North $\frac{3}{4}$ West?

(Testimony of Peter Albert Obert.)

A. North by West $\frac{1}{8}$ West.

Q. North by West $\frac{1}{8}$ West?

A. Yes.

Q. Well, that is the magnetic course the Captain laid down on this chart from Triple Island up through Caamano Passage, isn't it, North by West $\frac{1}{8}$ West?

A. Yes, sir. I don't know whether the Captain did—the second officer or the Captain.

Q. Anyway, you saw it on the chart?

A. Yes.

Q. North by West $\frac{1}{8}$ West?

A. Yes, sir.

Q. And that is the magnetic course you wanted to make good? [1970]

A. Yes, sir.

Q. What deviation, if any, did you allow in setting your compass course in order to make good that magnetic course, North by West $\frac{1}{8}$ West.

A. North $\frac{3}{4}$ West.

Q. Did that include any allowance for deviation of the compass at all?

A. Just about one degree.

Q. Well, that is the first time you have mentioned any allowance for deviation at all?

A. I mentioned that before.

Q. You did?

A. Yes.

Q. What kind of deviation was that?

A. Westerly.

Q. That was westerly deviation, wasn't it?

(Testimony of Peter Albert Obert.)

A. Yes.

Q. Exactly. Now, if you are wrong in your assumption that a westerly deviation throws your ship's bow to the right instead of the left, then if your westerly deviation was $\frac{3}{8}$ of a point and you were trying to make good that course North by West $\frac{1}{8}$ West, you would run right on that reef where the "Denali" stranded, wouldn't you?

A. No, sir.

Q. Why not?

A. One degree is nothing on a short course like that, don't amount to anything. If you run several hundred miles it is a different thing, or a hundred miles.

Q. You would have to run several hundred miles before a deviation of one degree would make any substantial [1971] difference, is that what you want to testify?

A. In 60 miles, one degree, you only get a mile.

Q. Only a mile?

A. That is all.

Q. Well, you cannot afford to be taking chances on miles either one way or the other when you are steering a course through a narrow passage, can you, Pilot?

Mr. Long: I object to that as purely argumentative, and ask that counsel's remark be stricken.

The Court: Objection overruled.

Mr. Long: Exception.

The Court: Request denied; exception allowed.

(Testimony of Peter Albert Obert.)

Q. (By Mr. Ryan) Did you understand the question?

The Court: I think he answered it.

Mr. Long: I didn't hear the answer.

The Court: Read the question. (Last question read.)

Mr. Long: I make the same objection.

The Court: That objection as applying to a narrow passage is sustained, because the witness just said that in short distances one degree deviation didn't make any difference. He said it might make as much as a mile difference if the distance covered on a certain course was 55 or 60 miles, so that the matter of miles is not involved in a short passage, which he seems to claim that this was.

Q. (By Mr. Ryan) What is the distance from this fix off Triple Island, where the "Denali" was, as you have laid it down on this chart, Petitioner's Exhibit 33, to the reef on which she stranded?

A. I don't remember exactly. About 22 miles, I think. [1972] I am not quite positive.

Q. And a deviation of one degree westerly would have not much effect in the course of 22 miles in setting your ship at right angles to the west of your course?

A. Well, it would be only about a third of a degree.

The Witness: Yes; which is nothing.

(Testimony of Peter Albert Obert.)

Q. I ask you to assume one degree. Does one degree westerly deviation, what effect does one degree westerly deviation have on a ship which is steering a distance of 22 miles, so far as throwing her at right angles to her course is concerned?

A. It would be nothing.

Q. Nothing at all?

A. No.

The Court: I think you should inquire about some other subject.

Q. Suppose it is two degrees?

A. Well, I wasn't steering by the compass very much; I was piloting. I was trying to pick up the land, direct myself by the land.

Q. And you were making no allowance for deviation whatever, is that right?

A. One degree, as I said.

Q. You said that for the first time today, didn't you, Captain?

A. I have said that a good many times.

Q. As far as this trial is concerned.

A. I have said it a good many times to you.

Q. On August 2, 1935, in the United States Attorney's [1973] office here in Seattle, under the circumstances and before the persons I described to you in full yesterday, did you or did you not state as follows, under oath——

Mr. Long: What page?

Mr. Ryan: Page 5.

Q. (By Mr. Ryan) You answer that you did yesterday, you testified here under oath as follows,

(Testimony of Peter Albert Obert.)

you testified that you stated—well, strike that out.

Mr. Ryan: Your Honor, I did not realize he had already admitted that yesterday.

Mr. Long: Let us know what you are referring to.

Mr. Ryan: I am not referring to anything right now.

Mr. Bogle: Then I move that the remark be stricken.

Mr. Ryan: I asked that it be stricken.

Mr. Bogle: I mean your last remark.

The Court: It will be stricken, all of it, with reference to this last matter.

Q. (By Mr. Ryan) Did you or did you not testify before the United States Steamboat Inspectors at the investigation in May, 1935, as follows:

“Q. Did you find the vessel making her courses regularly?

A. Yes, sir. We had to allow for deviation a little, from one to one and a half degrees. You allow accordingly.”

Did you so testify?

A. Yes, I guess I did.

Mr. Long: What is the page, Mr. Ryan?

Mr. Ryan: That is page 3 of my copy.

Q. You testified yesterday that in August, 1935, you made [1974] a statement under oath to the effect that the deviation on the compass of the “Denali” averaged from one and one-half to two and one-half degrees. In view of the fact that you have

(Testimony of Peter Albert Obert.)

used that word "average", will you please tell me what the maximum deviation was on any heading?

The Court: Before answering that question—if the question is complete—will you accommodate counsel by referring to the page?

Mr. Ryan: I refer to page 5 of his sworn statement which he testified yesterday he did swear to, on August 2, 1935.

Mr. Long: There is no such testimony. You are referring to the statement in the District Attorney's office?

Mr. Ryan: Yes.

Mr. Bogle: He didn't swear to it.

Mr. Ryan: Look at page 1428 of the record.

The Court: Counsel is now referring to what this witness testified yesterday, relating to what he did.

Mr. Ryan: Yes; page 1427 and page 1428 of the record. He testified yesterday that he made that statement under oath.

The Court: He made a statement?

Mr. Ryan: Yes; he made a statement, and the statement that he said he made was that the deviation on the compass averaged from one and a half to two and a half degrees. Now I am asking him what the maximum was that he found on any heading.

The Witness: I don't remember making such a state- [1975] ment to you.

Q. (By Mr. Ryan) You cannot tell us the maximum there was on any heading?

(Testimony of Peter Albert Obert.)

The Court: Can you now tell?

Q. (Continuing) Can you now tell us the maximum there was on any heading, the maximum deviation on any heading of the "Denali"?

A. Well, as far as I remember, about one or one and a quarter, one and a half, something like that, was the most that she had.

Q. The statement you made in the United States Attorney's office was made in August, 1935, shortly after the stranding, wasn't it?

Mr. Bogle: What page is that?

Mr. Ryan: The one I read, page 5.

Q. Your testimony now is that you have forgotten, you don't remember the deviation, is that right, the greatest deviation on any heading of the "Denali"?

A. I remember that you asked me by the pilot house compass, what I was steering at that time.

Q. Well, your testimony will stand as it is given in the record.

A. Well, I don't remember anything about it.

The Court: He says he doesn't remember. Now, ask him something else.

Q. Captain, if in steering the course from the fix off Triple Island up through Caamano Passage, suppose a dense fog had set in, you wouldn't have run aground if there was no current setting you to westward, no tidal current;— [1976]

A. In a thick fog I would have turned around.

Q. (Continuing) —and no westerly deviation, would you?

(Testimony of Peter Albert Obert.)

Mr. Long: Let the witness answer the question.

The Court: The witness has interjected a part answer before the question was finished.

Mr. Long: I thought he had finished.

The Court: Read the question. (Record read as follows:

“Q. Captain, if in steering the course from the fix off Triple Island up through Caamano Passage, suppose a dense fog had set in, you wouldn't have run aground if there was no current setting you to westward, no tidal current,—

A. In a thick fog I would have turned around.”)

The Court: This is another question with an “if” or condition stated in it which has nothing to do with what you were doing on the occasion, but it is a question that is complete in itself without reference to what you actually did on the ground.

Mr. Bogle: I enter an objection to it, Your Honor, as not being proper cross examination, as being a hypothetical question not based upon any evidence adduced in this case, but the assumption is entirely contrary to the positive evidence.

The Court: Objection overruled.

Q. (By Mr. Ryan) Will you answer the question.

A. I answered it. I would never attempt to go in there in a fog.

(Testimony of Peter Albert Obert.)

Q. That is the only answer you want to make to that question?

A. Yes, sir.

Q. On setting this course from the fix off Triple Island, [1977] up through Caamano Passage, did you set a course which would run you aground, or not?

A. No; I wouldn't set a course that would run me aground, no.

Q. And you didn't on that night, either, did you; you didn't deliberately set a course from your fix off Triple Island which would run you aground, did you?

A. No.

Q. It would have run you safely through the channel, wouldn't it?

A. That is what I figured on doing, yes.

Q. Certainly.

A. In fact, I did so.

Q. If your compasses were unreliable and had a deviation that you didn't know about you would go aground under those circumstances, wouldn't you?

A. If I didn't know?

Q. Yes.

A. But I did know.

Q. And you wouldn't have to have any current to help you get around, you would go aground just because you didn't know that deviation on the compasses, isn't that right?

(Testimony of Peter Albert Obert.)

Mr. Long: That is objected to as argumentative, Your Honor.

Q. (Continuing) On the course that you set through Caamano Passage.

Mr. Long: I think the witness has endeavored to answer that.

The Court: Objection overruled.

The Witness: I am not answering. [1978]

Q. (By Mr. Ryan) Now, Captain, when you set this course North $\frac{3}{4}$ West by standard compass from the fix off Triple Island, you made an allowance for a possible or expectable being thrown to the westward from some cause, didn't you?

Mr. Bogle: May I have that question?

The Witness: Yes; I expected——

Mr. Bogle: (Interposing) Just a minute, Captain. (Last question read.)

The Witness: On account of the current.

Q. You never saw any current, did you, on that night?

A. But you can feel it sometimes in the water.

Q. You never saw it, did you?

A. No, I didn't see it, no.

Q. You mean you reached your hand down in the water and felt it?

A. Don't ask me foolish questions.

Q. What do you mean by saying that you could feel the current?

A. On the ship, yes.

(Testimony of Peter Albert Obert.)

Q. You mean that standing on the bridge sailing along you could feel the current, is that what you mean to say?

A. On a ship sometimes she will start to swing on you, turn. There is always an eddy and a current. You can tell when a ship starts to steer bad.

Q. Exactly. You can tell when a ship starts to steer bad, and suppose her compass is in bad condition she will start to steer bad, won't she?

A. I never noticed that.

Q. Well, she would, wouldn't she, if your compasses were in bad condition. [1979]

A. But the compasses were not in bad condition.

Q. I asked you to assume they were.

A. I am not assuming that.

Q. Then she would steer just as you described it, wouldn't she? Answer the question.

A. No; I am not answering that.

Q. You are not answering the question?

A. Not that.

Q. All you know is that at some time after you set this course from this fix off Triple Island, which you had carefully ascertained, and after the course had been laid down on the chart, magnetic, and after you had made some allowance for being thrown to the westward from some cause, nevertheless, you found yourself still further to the westward than you had allowed for, isn't that so?

A. About 1:30 in the morning, yes.

Q. An unknown westerly deviation of the compass would account for that result, wouldn't it?

(Testimony of Peter Albert Obert.)

A. The deviation of the compass was known.

Q. But if it was unknown it would account for that result, wouldn't it?

A. It was known. We knew what we were doing.

Q. Answer the question. If the deviation was unknown it would account for that result, under those circumstances, wouldn't it?

A. If it was unknown it would set me ashore before I got there.

Mr. Long: I submit, if Your Honor please, that the witness has stated, to my acknowledge, at least eleven times that what set him to the westward was the tide. [1980]

The Court: The objection is overruled in this connection. I will say, Mr. Ryan, that it seems to me that the examination about the matter of deviation and its effect here, its supposed effect on certain supposititious questions and situations, has been rather fully and exhaustively put to this witness. Of course the Court cannot re-constitute these witnesses, the nature or method of the mental suppositions of this witness or any other witness, but we have to take the witness as we find him, and consider his linguistic ability, and taking those things into consideration it seems to me you have pretty fully covered the matter.

Mr. Ryan: All right. With Your Honor's statement I will abbreviate this. But may I have an answer to that last question?

(Testimony of Peter Albert Obert.)

The Court: Yes. Read the question. (Question read as follows:

“Q. If the deviation was unknown it would account for that result, under those circumstances, wouldn't it?”)

Q. (By Mr. Ryan) I am asking you to just make the assumption.

A. No; I am not making any assumption. I have no answer for it.

Q. If that assumption were true, then that would account for that result, wouldn't it?

A. No, sir.

Q. Why not?

A. Because there was no deviation, and I was piloting.

Q. All right. Now, you knew your position off Triple Island to be 10½ miles distant, abeam, on this course that you [1981] had been following up to that point, didn't you, Captain?

A. Yes, sir.

Q. And from that time on you steered a straight and steady course by your compass, up here until you got near Caamano Passage, didn't you?

A. No, sir. I changed it many times before I got up to there.

Q. Well, your log book shows you made no change at all, doesn't it?

A. Yes.

Q. And then before the Steamboat Inspectors you told them you made one haul to the right, off

(Testimony of Peter Albert Obert.)

Prince Lebo Island for 15 or 20 minutes, isn't that so?

A. Yes.

Q. And hauled to the north, isn't that right?

A. Yes.

Q. On a North course?

A. Yes.

Q. For 15 or 20 minutes?

A. Yes.

Q. All right. Now here in this trial you say, you testified on direct examination the changes you made first one haul to the right, or East, of one-quarter point, and then one of one-eighth point, and then another one that you didn't specify the amount, isn't that right?

A. Several changes, yes.

Q. Under those circumstances, if you steered from Triple Island Light, starting out on this course North $\frac{3}{4}$ [1982] West magnetic, and the only changes you were making were those three changes to the right, or eastward, you would know absolutely that you would not be to the left or westward of your course unless you were thrown there by tidal current, or by the unknown deviation of the compass, isn't that so?

A. Tidal current, yes.

Q. Or unknown deviation of the compass, if it existed, isn't that so?

A. But there was no deviation.

Q. But if it existed?

(Testimony of Peter Albert Obert.)

A. In such a short distance there wouldn't be any.

Q. If it existed it would account for it?

A. It didn't exist.

Mr. Long: I object to this as repetitious.

The Court: This is a summarized question and I will let counsel propound this question. The question is stated clearly, and I think it may be answered by this witness. Read the question: (Question read as follows:

“Q. Under those circumstances, if you steered from Triple Island Light, starting out on this course North $\frac{3}{4}$ West magnetic, and the only changes you were making were those three changes to the right, or eastward, you would know absolutely that you would not be to the left or westward of your course unless you were thrown there by tidal current, or by the unknown deviation of the compass, isn't that so?”) [1983]

The Court: If there was unknown deviation.

Mr. Ryan: Yes, that is right.

Mr. Bogle: Now, if Your Honor please, I think that the question——

Q. (Mr. Ryan, interposing) Yes, if there was unknown deviation.

Mr. Long: The question assumes that there were only three changes, and the witness had said many times that there were more than three changes.

(Testimony of Peter Albert Obert.)

Mr. Ryan: Please do not interrupt my cross examination.

The Court: The objection is overruled. I am going to let counsel propound this question. Now, will you try to answer the question?

The Witness: Well, there is no unknown changes.

The Court: I know, Captain, but suppose there were.

Mr. Ryan: Not suppose there were. I don't want him to suppose that there were any unknown changes.

The Court: Very well.

Mr. Ryan: Just read the question, but I do not want him to suppose that there were any unknown changes.

The Court: Well, strike out what I said in that regard.

Mr. Ryan: I am sorry, Your Honor.

The Court: Proceed.

Mr. Ryan: Read that same question. Just read the question.

The Court: Yes, just read the question.

(Question read) [1984]

A. I cannot answer that.

The Court: He says that he cannot answer that. Then proceed and ask him another question.

Mr. Ryan: Yes.

Q. (By Mr. Ryan) Well, under those circumstances, assuming——

A. (Interposing) I am not assuming anything.

(Testimony of Peter Albert Obert.)

Q. (Continuing)—merely for the purpose of argument, that you were wrong in your assumption that there was a tidal current setting you to the left or westward, then the only reasonable explanation of the “Denali’s” running to the westward and getting on that reef would be unknown deviation of the compass, isn’t that so?

A. No.

Q. Why not?

A. I know what it was. I know what the current was.

Q. Well, I am asking you to assume——

A. (Interposing) I am not assuming anything.

Q. (Continuing)—that you were wrong.

A. I don’t assume anything.

Q. Assume that the current was throwing you to the west.

A. I don’t assume anything.

Q. If you would assume that you were wrong, then there is no reasonable explanation here of this stranding excepting unknown deviation of the compass, isn’t that right?

A. The deviation was all known.

Q. What?

A. The deviation was all known.

Q. I see.

A. I didn’t assume it. [1985]

Q. But if there were no current setting to the westward at all——

A. (Interposing) But there was a current.

(Testimony of Peter Albert Obert.)

Q. (Continuing)—can you give me a reasonable explanation for—if there was no current setting you to the westward can you give me——

A. (Interposing) We don't——

Q. (Interposing) Please, will you not interrupt the question.

A. All right.

Q. Now, listen to the question. I am having difficulty in having you answer the question.

A. I know.

Q. You understand that, Captain, don't you? Now, I am trying to be as fair as I can be about these things with you, Captain.

A. Yes, I know.

Q. Now, listen to my question. If there was no current—no tidal current setting you to the westward, or left of your course, and if you were at all times steering this course by standard compass North $\frac{3}{4}$ West from that known fix off Triple Island, can you give me any reasonable explanation of why the "Denali" went to the west or left of her course and struck that reef, excepting unknown deviation of the compass?

A. Yes. I would have been ashore on Prince Lebo Island if I had kept on that course if there had not been any current.

Q. Why, Captain, you have laid the course down on the chart and it doesn't even go near Prince Lebo Island. Will [1986] you look at the chart here, Petitioner's Exhibit 33——

(Testimony of Peter Albert Obert.)

A. (Interposing) Well, the other one does not——

Q. (Continuing)—and see if that is not so?

Mr. Long: Let the witness answer. I am tired of all this.

Mr. Ryan: Now, please——

The Court: (Interposing) Your remarks are stricken, Mr. Long, and you are directed not to repeat any such remarks.

Mr. Long: Very well.

The Court: But if you have any objection you can make your objection.

Mr. Long: That is what I am intending to do. I am intending to make one.

The Court: The Court will rule upon any objection made to the Court, but there should not be any indulgence in side remarks between counsel.

Mr. Ryan: Read the question as far as it went.

(Question read as follows:

“Why, Captain, you have laid the course down on the chart and it doesn’t even go near Prince Lebo Island. Will you look at the chart here, Petitioner’s Exhibit 33, and see if that is not so?”)

Mr. Ryan: I will strike that question and ask it in this way.

Q. (By Mr. Ryan) This course North $\frac{3}{4}$ West that you have laid down from Triple Island does not even touch Prince Lebo Island, does it?

A. It is pretty close to it.

(Testimony of Peter Albert Obert.)

Q. How far away is the nearest part of Prince Lebo Island [1987] to that line that you have laid on the chart?

(Witness does not answer)

Q. Will you look at the chart, Petitioner's 33, and tell me?

A. Why, it would be about a mile off there, but I would have been ashore over here, however, just the same (indicating on Petitioner's Exhibit 33).

Mr. Long: What do you mean by "over here"? State that for the record.

A. Over here—on Dundas Island (indicating on Petitioner's Exhibit 33).

Q. (By Mr. Ryan) You mean that you would have run into Dundas Island?

A. Yes, sir.

Q. Later on some time?

A. And if I had made this course good (indicating on Petitioner's Exhibit 33) I would have been away from that, wouldn't I?

Q. You mean the course North by West $\frac{1}{8}$ West?

A. Yes, sir.

Q. So there is no doubt—I will strike that. Now, how far away could you see Zayas Island when you first cited it on that night?

A. Well, it was about 1:30; somewhere around there.

Q. I am not asking you about the time. I am asking you how far away it was; what the visibility was of Zayas Island.

(Testimony of Peter Albert Obert.)

A. About four miles—three or four miles.

The Court: At this time we will take a five minute recess.

(Recess) [1988]

The Court: You may proceed.

Mr. Bogle: If Your Honor please, Mr. Pellegrini is here now. Possibly we could take up the demand that I made of him when he was not present at the opening of court.

The Court: Yes. Mr. Reporter, will you read that statement to Mr. Pellegrini?

(Statement read as follows:

“If Your Honor please, in view of what transpired yesterday, on behalf of the petitioner at this time I make a demand that they produce, in connection with the examination of this witness, the statement which Mr. Pellegrini stated in open court yesterday he took from this witness on an occasion prior to the one referred to by Mr. Ryan. I think that we are entitled to the other statement as well as this for the purpose of examination.”)

The Court: And then Mr. Bogle referred to certain pages of the record.

(Statement of Mr. Bogle read as follows:

“I might say that Mr. Pellegrini’s statement to that effect appears on pages 1402 and 1403 of the record.”)

Mr. Pellegrini: If the Court please, this was an investigation made in the course of determining for

(Testimony of Peter Albert Obert.)

our own use whether or not there was a cause of action. It was in the nature of a confidential communication under the direction of the Attorney General. However, if counsel wishes to know about it, I will state that there was no written statement.

[1989]

The Court: There was no written statement. It was an oral statement?

Mr. Pellegrini: Yes. There was no oral statement other than this other statement that was referred to yesterday.

Mr. Bogle: Could you tell us when this oral statement was taken?

Mr. Pellegrini: My recollection is it was taken on the same day as this written statement, or the day before. I don't remember which it was.

Mr. Bogle: In other words, he was up at your office twice?

Mr. Pellegrini: Yes, he was up there twice.

The Court: Very well. Proceed.

Mr. Ryan: What was the last question?

(Questions and answers read as follows:

“Q. Now how far away could you see Zayas Island when you first cited it on that night?

A. Well, it was about 1:39; somewhere around there.

Q. I am not asking you about the time. I am asking you how far away it was; what the visibility was of Zayas Island?

A. About four miles—three or four miles.”)

(Testimony of Peter Albert Obert.)

Q. (By Mr. Ryan) What was the visibility on that night at the time that the vessel struck—how many miles—the range of visibility?

A. Well, that is pretty hard to say. It was just a little before break of day. [1990]

Q. How many miles visibility—the range of visibility is the question.

A. Oh, you could see clear about a mile or a mile and a half—something like that—but you could see the loom of the island.

Q. Did you or did you not testify before the Steamboat Inspectors at the investigation in May, 1935,

“Q. When this vessel struck what was the visibility like?”

Mr. Long: What page?

Mr. Ryan: Page 4.

Q. (By Mr. Ryan) And did you not testify,
“A. I would say about two miles. Of course,
we could see a light farther”.

Did you give that testimony?

A. I believe I did.

Q. Is that testimony true?

(Witness does not answer)

Q. Do you think that you could see Zayas Island any farther away than two miles?

A. Yes, sir.

Q. How did you measure the distance?

(Testimony of Peter Albert Obert.)

A. Well, shortly after—about shortly after 1:30 I could see the loom of it; just the loom of the island.

Q. Yes.

A. Not very plain.

Q. Well, you were within two miles of the island before you could make it out plainly, isn't that right?

A. Yes, sir; but I saw it before that.

Q. How long does it take the "Denali" to run two miles at eight and a half knots? [1991]

A. Oh, about fifteen minutes.

Q. And she struck at 2:44, didn't she?

A. 2:44, yes.

Q. Now, the currents—are there any currents shown on this Chart 2828, Petitioner's Exhibit 33—tidal currents?

A. Yes. There are lots of currents shown there.

The Court: You may go down to the chart and show them.

(Witness goes to Petitioner's Exhibit 33)

A. They are shown here (indicating on Petitioner's Exhibit 33).

Q. The witness indicates the arrows in Caamano Passage between Zayas Island and Dundas Island. Now, this one on the right hand side, what tidal current is that (indicating on Petitioner's Exhibit 33)?

A. That is three knots.

(Testimony of Peter Albert Obert.)

Q. It says, "One knot" on it, doesn't it?

A. There is both one and three. One flood—

Q. (Interposing) I am asking you about the one on the right hand side. That says, "One knot", doesn't it?

A. One knot.

Q. I am talking about that one and not about any other one.

A. How about this one (indicating on Petitioner's Exhibit 33)?

Q. Wait a minute. I am not asking about any other one for the moment. The one that I am asking you about is on the right hand side or east side marked "One Knot", isn't that right?

A. Yes, sir. [1992]

Q. Now, what does that arrow represent?

A. Flood tide.

Q. Now, there is another arrow—and the direction of that is roughly to the north, is it not?

A. Yes, sir.

Q. All right. Now, take this one to the west or left of that (indicating on Petitioner's Exhibit 33).

A. Yes.

Q. That arrow that points the other way?

A. Yes, sir.

Q. It says, "Two Knots" on it, doesn't it?

A. Yes, "Two Knots".

Q. It says, "2", doesn't it?

A. Yes, sir.

(Testimony of Peter Albert Obert.)

Q. And that points roughly to the south, doesn't it?

A. Yes, sir.

Q. Who put those arrows on the chart?

A. The Hydrographic Office.

Q. The United States Government?

A. The United States Government, yes, sir.

Q. Have you ever made any experiment with any instruments to determine the set and force of the tidal current—

A. (Interposing) No.

Q. (Continuing)—in that passage?

A. No.

Q. All right. Now, aren't there some other—

A. (Interposing) Currents?

Q. Yes, tidal currents.

A. Yes.

Q. Shown on that chart? [1993]

A. Yes.

Q. In the vicinity from Triple Island up to Caamano Passage?

A. It shows it in here. It shows a four knot current.

Q. I am not asking you way over there to the east of Brown Passage.

A. Well, that is where the current comes from.

Q. Now, listen to the question. The question is, From this fix off Triple Island up to this reef where you stranded, there are some other tidal currents shown on that chart, are there not?

(Testimony of Peter Albert Obert.)

A. Yes, sir.

Q. Where are they?

A. They are down here (indicating on Petitioner's Exhibit 33). There is current there (indicating).

Q. Well, the ship is not over there. Will you please listen to the question and then answer it.

A. Yes.

Q. From your fix off Triple Island, the course that you laid out, North $\frac{3}{4}$ West, up through Caa-mano Passage——

A. (Interposing) Yes.

Q. (Continuing) ——aren't there some more arrows, indicating tidal current on that course that you traversed between Triple Island and the reef on which you stranded?

A. There is one there (indicating on Petitioner's Exhibit 33).

Q. Yes; all right. Now, we will take this one. The witness indicates the one below the large—the one to the southwest of the—or to the west of the extreme southwest corner of Dundas Island—the right hand [1994] side one first. Now, that right hand side one points roughly north, does it not?

A. Approximately, yes, sir.

Q. And that is the flood tide, isn't it?

A. Well, they are both alike.

Q. Yes, but that is the flood tide, isn't it?

A. Well, they are both alike. There is one flood and one ebb.

(Testimony of Peter Albert Obert.)

Q. Wait a minute. I want to have the record clear. The one on the right is the flood tide?

A. Yes.

Q. It is force one knot, is it not?

A. Yes, sir.

Q. And it is shown so on the chart?

A. Yes, sir.

Q. Now, the one to the left, or west of that, points roughly to the south, does it not?

A. Yes, sir.

Q. And that is the ebb tide?

A. Yes, sir.

Q. And that is force one knot?

A. Yes, sir.

Q. All right. Now, there is also a current diagram on this chart, isn't there—down here in the lower left hand corner?

A. Yes, sir.

Q. On Petitioner's Exhibit 33?

A. Yes, which shows that the current is irregular.

Q. Now wait a minute. Now, that current diagram refers to points on this chart, A, B, C and D, does it not? [1995]

A. Well, it refers to all of them.

Q. Well, will you look there and see. Doesn't it refer to those?

A. I have looked at it. I know what they are.

Q. It refers to points A, B, C, D and E, does it not?

(Testimony of Peter Albert Obert.)

A. Yes.

Q. And point A is here, shortly to the west of Zayas Island, isn't it (indicating on Petitioner's Exhibit 33)?

A. Yes, sir.

Q. And point B is down here between Triple Island Light——

A. (Interposing) Yes.

Q. (Continuing) ——and the reef on which you stranded?

A. Yes, sir.

Q. Somewhat to the eastward of your course, isn't it?

A. Yes, sir.

Q. And point C is right near your fix off Triple Island?

A. Yes, sir.

Q. Just a little to the east, isn't it?

A. Yes, sir.

Q. All right. Now, that current diagram shows the force and direction——

A. (Interposing) Yes.

Q. (Continuing) ——of the tidal currents at every hour throughout the twenty-four hours, doesn't it?

A. That is what is given there.

Q. Yes. And the Canadian charts in that respect are just the same as the American charts, are they not; that is, British Admiralty Chart 1737?

(Testimony of Peter Albert Obert.)

A. The same thing. They are all alike. The same soundings, triangulations and contour of the land—they are all [1996] alike.

Q. As far as that tidal current is concerned that British Admiralty Chart 1737 is just the same as the American Chart 2828, isn't it?

A. I don't remember. I have never seen that.

Q. You have never seen the chart?

A. Yes, I have seen the chart, but I don't remember seeing the current diagram on it.

Q. You don't remember seeing the current diagram on it?

A. No, sir.

Q. That is the chart that the British and Canadian vessels use through there, isn't it?

A. Well, they use both. They use both American and Canadian charts.

Q. But at any rate all the sailing charts which masters and pilots use who are going up through Caamano Passage, or which they should use in good navigation show this current diagram down here at the lower left hand corner, do they not?

A. Yes.

Q. And they also show these various arrows at these various places?

A. Yes, sir.

Q. Giving the force and direction of the tide, do they not?

A. Yes, sir.

(Testimony of Peter Albert Obert.)

Q. So that with those charts you have an official statement from the United States Government and from the British Government and from the Canadian Government as to just what the force and direction of the tidal current is at every hour throughout the twenty-four hours all the way [1997] up through there, do you not?

A. Yes, sir.

Q. Now, isn't it a fact that there is no appreciable set to the westward or left at all in proceeding from, say, 1:15 A. M. on May 19, 1935, up through Caamano Passage for at least an hour of slack water, and from then on all you would get would be the influence of an ebb tide—of the beginning of an ebb tide which has, when it is running at its strongest, only a speed of two knots in a roughly southerly direction?

A. No.

Q. Isn't that so?

A. No.

Mr. Bogle: Now, wait a minute. I wish you would show him that on the chart.

Q. (By Mr. Ryan) Show me where it is not, using those current diagrams—

A. (Interposing) Yes.

Q. (Continuing) —and arrows as given to you by the government.

A. Come here, and I will show you. Where would the ebb tide come from (looking on Peti-

(Testimony of Peter Albert Obert.)

tioner's Exhibit 33). I pay no attention to that (indicating).

Q. As shown by the arrows and current diagrams given by the government.

A. I pay no attention to that (indicating).

Q. Well, what do you pay attention to?

A. To the current coming out of here (indicating on Petitioner's Exhibit 33). That is where the tide comes [1998] from.

Q. Well, did you pay any attention to——

A. (Interposing) Oh, that is all rot that you say. There is no use to answer that. That is a foolish question you ask me.

Q. (By Mr. Ryan) Now, do you pay any attention to——

Mr. Bogle: (Interposing) The witness was referring to the current coming "out of here", and I would like to know what "out of here" means.

Mr. Ryan: Now, I would like to develop this in my own way.

The Court: Do you have any objection to make, Mr. Bogle?

Mr. Ryan: And there is no question before the Court.

Mr. Bogle: Yes, I have an objection to make.

The Court: What is your objection?

Mr. Bogle: The witness in answering referred to "out of here" and it does not mean anything in the record, and I think that he ought to be allowed to state——

(Testimony of Peter Albert Obert.)

The Court: (Interposing) Counsel, as I understand it, is trying to accommodate that situation, and was doing his best to do it. He was not getting the right kind of cooperation from the witness. If the witness, in answering will keep his mind on the question and answer that, and try to avoid an argumentative attitude we will get along faster. Proceed.

Q. (By Mr. Ryan) In navigating from Triple Island Light up through Caamano Passage is it usual practice and [1999] safe practice for navigators to place any reliance on these arrows and this hourly current direction and force diagram at these various places——

A. (Interposing) No.

Q. (Continuing) ——that the United States Government and the British Government have put on here——on this Chart 2828?

A. No.

Q. No reliance whatever?

A. Not on this here (indicating), but right here (indicating on Petitioner's Exhibit 33).

Mr. Long: Now, may the witness explain what he means by "right here"?

The Court: Yes.

Mr. Ryan: You will have a chance to have him explain that on redirect examination. I am having difficulty enough.

The Court: The objection is sustained, and the Court will ask the witness if there is any explana-

(Testimony of Peter Albert Obert.)

tion that he wishes to make about his statement concerning currents “right here”, and if he does, to indicate on the map the position that you, the witness, are indicating when you use the words “right here”.

The Witness: Right in here it shows from 1 to 2 knots, does it not (indicating on Petitioner’s Exhibit 33)?

The Court: Let the record show that he is pointing to the channel up Caamano Passage—

The Witness: (Interposing) And it has been proven many a time. [2000]

The Court: (Continuing) —between approximately the place of stranding and a point opposite on Dundas Island.

The Witness: Yes.

Mr. Long: Now go ahead with your explanation.

The Witness: It has been proven that the tide runs as much as five knots an hour through here (indicating on Petitioner’s Exhibit 33).

Q. (By Mr. Ryan) All right.

A. The ebb tide. Here it shows four, and the ebb tide comes out here (indicating on Petitioner’s Exhibit 33). Here is where the tide comes from (indicating on Petitioner’s Exhibit 33).

Q. (By Mr. Ryan) Referring to the middle part of Brown Passage.

A. Referring to the middle part of Brown Passage. She runs four miles an hour there. She comes out from Portland Canal, ninety miles up there,

(Testimony of Peter Albert Obert.)

and she comes out through here (indicating on Petitioner's Exhibit 33).

The Court: Through what?

The Witness: Through this little passage here (indicating on Petitioner's Exhibit 33).

The Court: What is that little passage?

The Witness: That is Hudson Bay Passage.

Mr. Ryan: All right.

The Court: Now ask him another question.

Q. (By Mr. Ryan) Have you ever used any instrument or used tidal observation methods such as are standards by the various governments and mariners to determine—— [2000½]

A. (Interposing) No, sir.

Q. (Continuing) ——any of those things?

A. No, sir.

Q. Will you give me the names and addresses of the persons whom you say have proven that the United States Government and the British Government are wrong in their latest sailing charts as to what they inform all mariners right now—strike out the words “right now”—are the currents—are the tidal currents that will be encountered in that area?

A. The tidal currents——

Q. (Interposing) Will you answer my question? I am asking you for the names and addresses of those men.

A. You can easily find that out by those right here.

(Testimony of Peter Albert Obert.)

Mr. Long: I object to that. With reference to the government information counsel read from a book here the other day where that was not to be relied upon. He read that in connection with some questions that he asked one of the other witnesses the other day.

The Court: Objection overruled. Read the question. I wish you, the witness, would keep your mind on the form of the question, and if it turns out that it is not a proper form of question the Court of its own motion will sustain an objection to it, or if counsel present will object, the Court will rule upon it. But it is not for you, witness, to say whether the question is proper. You keep your mind on the question, and if you can answer it, please answer it, and if you cannot, just say so. Proceed.

Mr. Ryan: Just read the question. [2001]

(Question read as follows: "Will you give me the names and addresses of the persons whom you say have proven that the United States Government and the British Government are wrong in their latest sailing charts as to what they inform all mariners are the currents—are the tidal currents that will be encountered in that area?")

A. You can easily find that out right here from the men who are in this courtroom.

The Court: The question is for you to give the names of the men that you know would prove that, touching that subject.

The Witness: No, I do not know their names.

(Testimony of Peter Albert Obert.)

The Court: Proceed.

Q. (By Mr. Ryan) Now, you do realize very keenly, Captain, do you not, that if the tidal current—you realize very keenly, do you not, Captain, that if the United States Government and the British Government are correct in the statements they make to mariners on these usual sailing charts, U. S. H. O. 2828 and British Admiralty Chart 1737 in the form of these current diagrams for each hour of the twenty-four hours in that area, and in the form of these arrows with the exact magnetic direction and force—I say you realize very keenly that if the governments are right in what they say there, then the only reasonable explanation of the “Denali” getting over on that reef is because she had an unreliable compass which had a deviation, don’t you?

Mr. Long: I object to that as argumentative, and [2002] repetitious, and nothing but a statement and not a question.

The Court: This man is supposed to be an expert navigator, and I think it is competent to ask him that question. The objection will be overruled.

A. I am not saying that the chart——

Mr. Bogle: (Interposing) We didn’t put him on for that purpose. We merely asked him for events in connection with that particular voyage.

The Court: But he has stated his long years of experience as a navigator in Southeastern and Southwestern Alaska.

(Testimony of Peter Albert Obert.)

Mr. Bogle: That is correct, but we only put him on in connection with this voyage.

The Court: The objection is overruled.

Mr. Long: Go ahead and answer the question, Captain.

Q. (By Mr. Ryan) Will you answer the question, Captain?

A. I am not saying that the chart is wrong, but I am saying that those arrows are wrong. It does not show the amount of current that runs through there—the strength of it.

Q. But you realize that unless they are wrong the only reasonable explanation for the “Denali” getting over on that reef where she stranded is something wrong with the compass?

A. No, no.

Q. Don't you?

A. No, no. I say——

Q. (Interposing) What other—— [2003]

Mr. Long: (Interposing) Wait a minute. Let him answer the question. He hasn't finished.

Mr. Ryan: Let me put my question.

The Court: Proceed.

Q. (By Mr. Ryan) What other reasonable explanation can you give under those circumstances?

The Court: Other than the current.

Mr. Ryan: Yes.

Q. (By Mr. Ryan) Other than the current that is contrary to the government charts.

A. I am not saying that the government chart is wrong; absolutely not; but just those arrows.

(Testimony of Peter Albert Obert.)

Q. But if the arrows on those government charts are correct, then there is no reasonable explanation you can give us for this stranding excepting something wrong with the compass?

A. No. The currents set me off. Wrong currents.

Q. You cannot give me any other reasonable explanation—

A. (Interposing) No, sir.

Q. (Continuing) And that current would have to be one which is not shown on any chart which you can produce, isn't that right?

Mr. Long: I object to that as being argumentative.

The Court: Objection overruled.

Mr. Ryan: Read the question.

(Question read)

(Witness does not answer)

The Court: He may answer that question if he can, and if he cannot, he may say so.

A. I have no answer. [2004]

Q. (By Mr. Ryan) Now, in making this allowance for tidal current in setting your course off Triple Island, from that fix, up through Caamano Passage, what force and direction of tidal current did you expect and allow for?

A. About three to four knots of current.

Q. In what direction?

A. Southwest.

(Testimony of Peter Albert Obert.)

Q. Did you or did you not testify at the trial before the United States Steamboat Inspectors in June, 1935, at page 10, as follows:

“Q. Is it true that the tides and the currents are to some extent an unknown quantity, regardless of the instruments?

A. Well, there is a very strong tide where the tide runs north and south.”

Did you or did you not so swear?

A. Yes; in the Passage.

Q. It runs north and south in the passage, you want to say now?

A. That is the only way she could run.

Q. The island here, Dundas Island, is so big that the tide couldn't go underneath the island, could it?

A. I never saw it done.

Q. No; of course not. It would have to come down here, like through a little box, or through the neck of a bottle; it would have to follow the coast line of Dundas Island, the west coast line of Dundas Island.

A. For a short distance, yes.

Q. Now, Captain, what was the title of the chart that you [2005] were using for navigating the “Denali” between Triple Island Light and Caamano Passage on the night of the stranding?

A. That is the chart right there. (Indicating chart on easel.)

Q. What was the title of it?

(Testimony of Peter Albert Obert.)

A. "Edeye Passage to Portland Inlet."

Mr. Ryan: The witness goes down to the chart and reads the words on it. I want the record to show that.

Q. Now go back to the stand, Captain. Did you or did you not testify under oath on August 2, 1935, in the United States Attorney's office, before the persons that I described to you yesterday, and under the circumstances I described to you, as follows: pages 19 and 20——

Mr. Ryan: Oh, wait a minute; he testified yesterday he did make those answers under oath. I withdraw that question.

Q. (By Mr. Ryan) You testified yesterday that the title of the chart that you were using for navigation, that is, the title of the United States chart, was "Part of Dixon's Entrance and Brown Passage", didn't you? You testified here yesterday afternoon to that effect?

A. Yes.

Q. That is not the title of this chart No. 2828, is it?

A. It is there; there is Brown Passage and Dixon's Entrance.

Q. The title of this chart is "Brown Passage and Dixon's Entrance"?

A. It is a different name, that is all.

Q. There is a chart of Brown Passage and Dixon's Entrance, isn't there?

A. It is right there. [2006]

(Testimony of Peter Albert Obert.)

Q. I withdraw that question. I want to put it this way. What was the number of the chart?

A. I don't remember.

Q. The United States chart that you were using for navigating the "Denali" on the night of the stranding.

A. No. 2828, I think, is the number.

Q. You testified yesterday afternoon in answer to the question what was the number of the United States chart, "I am not sure. I think it was No. 8920." I am asking you now——

A. (Interposing) I don't remember what the number was.

Q. Well, there is a chart——

Mr. Bogle: (Interposing) I object to that, if the Court please. Counsel read yesterday afternoon from the statement that they say he made before the United States Attorney, where they claim he said it was No. 8920. He didn't testify yesterday afternoon with reference to No. 8920, to my knowledge.

Mr. Ryan: Yes, he did. He testified yesterday afternoon that he gave that answer on August 2, 1935.

The Court: Proceed.

Q. (By Mr. Ryan) There is a chart No. 8102 of that area, isn't there?

A. Yes.

Q. And that is the chart that the Petitioner brought in here that the third officer, Larson, saved?

(Testimony of Peter Albert Obert.)

A. The same chart, isn't it?

Q. It is the same chart as No. 2828, is that your idea?

A. It shows Triple Island, Brown Passage and Dixon's Entrance.

Q. If you didn't have on board the "Denali" chart No. 2828, [2007] with this current diagram on it, and with all these arrows indicating the force and direction of the current you would not be able to know, would you, what the force and direction of the tidal current was at these various places as given to you by the United States Government?

A. We usually know that, just how the current runs, and how it sets in.

Q. You would not know it unless you had memorized all that, would you?

A. Yes; we remember it pretty well.

Q. But you wouldn't have anything before you to give you the figures, and how it was at each hour of the 24 hours, and what the force and direction was?

A. We do piloting in Alaska, we don't look at the figures. We always have the charts out for reference.

Q. You were steering a compass course all the time from the point "A" as you went up to Caamano Passage, isn't that right?

A. Until I sighted land.

Q. Then you made these various hauls to the right?

(Testimony of Peter Albert Obert.)

A. Absolutely.

Q. And your third officer would write those on a slip of paper, wouldn't he, as you made each haul to the right?

A. But they were not put down in the book.

Q. They were not in the pilot house book?

A. No.

Q. He would record them as you made each one on pieces of paper?

A. I don't know whether he did or not.

Q. That would be the usual practice, wouldn't it? [2008]

A. No.

Q. It would not be the usual practice?

A. No.

Q. In the Alaska trade, for the third officer on watch to write down the change of course that was being made as it was being made?

A. No; not any changes like that. If he was to put them all down in the log book we would have the log book full of changes. You have to change quite often, many, many times a day.

Q. Now, Pilot, I want you to be fair here—well, strike that out. When you left Triple Island and headed up on this North $\frac{3}{4}$ West course you were steering by compass, were you not?

A. Yes.

Q. Nothing else?—by compass from a fixed position, steering in a known direction—

A. (Interposing) Not all the time.

(Testimony of Peter Albert Obert.)

Q. (Continuing) At a known speed?

A. Not all the way.

Q. But you were for a long time, a considerable time, weren't you?

A. Until I picked up the land.

Q. Now, you went all the way along there, and you finally—steering just that way—until you came up to the entrance to Caamano Passage, is that it?

Mr. Long: If Your Honor please——

The Witness: No, no, no.

Mr. Long: This witness has not so testified.

The Court: The objection is sustained because it is [2009] repetitious.

Mr. Ryan: I am trying to get the situation from then on.

The Court: The objection is sustained, change to something else.

Q. (By Mr. Ryan) Now, when you first saw land, all you saw was haziness and loom, when you first sighted it.

A. I sighted Zayas Island.

Q. There was nothing you could get a bearing on, was there?

A. That is right.

Mr. Long: That is objected to as repetitious. Counsel went all over that.

The Court: It seems so to me.

Mr. Ryan: I am going on from that point.

The Court: Then start at the place where you want to go on from, without going over the same

(Testimony of Peter Albert Obert.)

ground you have been over before. That is what is objected to.

Mr. Ryan: All right, Your Honor.

Q. (By Mr. Ryan) Here you are in a position where you know where you are, that is, you have been steering a compass course in a known direction, at a known speed of the vessel, from a fixed point right off Triple Island Light, you are going along there, you are certain of your position all the time, and you finally come to a point where you sighted some——

A. (Interposing) Land.

Q. Land—but it is not clear enough for you to take a bow and beam bearing on it yet. Now, under those circumstances any navigator would keep right on his compass course, just the way he was—he knew that is where he [2010] was, he had his dead reckoning position, didn't he, at that time?—Isn't that right?

Mr. Bogle: I object to that, if Your Honor please, as argumentative.

Q. (Continuing) You knew where you were at that time?

The Court: The objection is sustained.

Q. (By Mr. Ryan) Now, from that time on——

Mr. Long: (Interposing) What time?

Mr. Ryan: From the time he first saw this land looming up and couldn't get any bearings on anything, any bow and beam bearings on anything.

Mr. Long: At 1:30, you are speaking of?

(Testimony of Peter Albert Obert.)

Mr. Ryan: Please do not interrupt.

Mr. Long: I am trying to follow this.

The Court: The objection to it is sustained, and if there is some other question you wish to ask the witness, propound that question now.

Q. (By Mr. Ryan) When you are going along, and you know what you have been steering, and the direction and speed you have been going, from a fixed place off Triple Island—you are certain now from that point on——

Mr. Long: (Interposing) The same objection.

Q. (Continuing) ——and you suddenly sight land——

The Court: Mr. Ryan, the Court has directed that you change the subject matter of your inquiry.

Mr. Ryan: I am trying to go on from there.

The Court: The objection is sustained. Go to another subject if you wish to make further cross examination.

Q. (By Mr. Ryan) After you sighted this land or loom, on [2011] which you couldn't take any bow and beam bearing, you would have to keep on using your compass until you could take a bow and beam bearing on something, some landmark, wouldn't you?

Mr. Long: I object to that, Your Honor.

The Court: It is the same objection, and it is sustained, and you are directed to proceed with the examination on some other subject. Proceed.

Mr. Ryan: Exception, please.

(Testimony of Peter Albert Obert.)

The Court: Exception allowed.

Mr. Ryan: If the Court please, I was trying to show that the man would absolutely have to rely on his compass, and any navigator would.

Mr. Long: I objected to that, and I ask that the remarks of counsel be stricken.

Mr. Ryan: Until he could get a bow and beam bearing on known landmarks.

The Court: The ruling is sustained. You have been over it.

Mr. Ryan: I haven't been over that, I don't think, Your Honor.

The Court: As the Court recalls, the whole subject has been very fully gone into.

Mr. Ryan: Exception.

The Court: Exception allowed.

Q. (By Mr. Ryan) You say you made an allowance for a westerly deviation of the compass in setting that course from Triple Island up through Caamano Passage, is that right?

A. Just one degree allowed.

Q. Where did you get that deviation from; how did you know [2012] that was the deviation?

A. From the book.

Q. The compass deviation book?

A. The deviation book.

Q. What was the entry in the compass deviation book, if you remember?

A. On the North course it showed one, westerly.

Q. Was that an azimuth?

(Testimony of Peter Albert Obert.)

A. Yes, sir.

Q. When was that azimuth taken, that particular one?

A. Somewhere around off the north end of Vancouver Island I asked the second officer to take it.

Q. Were you on watch?

A. I was on watch at the time that I asked him, yes.

Q. He took an azimuth by the sun, is that it?

A. Certainly.

Q. That was from the north end of Vancouver Island, wasn't it?

A. I don't remember whether we were up to the end yet. Around the vicinity there some place.

Q. What time was it you asked the second officer to take that deviation?

A. I think it was in the afternoon.

Q. Afternoon of what date?

A. I don't remember the date.

Q. Was it or was it not taken when the "Denali" was proceeding from the north end of Vancouver Island, up north?

A. It might have been the next morning he took it.

Q. I am asking you if that is the fact?

A. I don't remember that. [2013]

Q. On what course was the "Denali" at the time that azimuth was taken, that is, what was her heading by compass?

A. I don't know.

(Testimony of Peter Albert Obert.)

Q. Well, look in the pilot house log book and tell me. (Handing log book to witness.)

The Court: If you can.

Mr. Bogle: He said he was not on watch——

Q. If you can, tell me what the heading was of the “Denali”, by compass, from the north end of Vancouver Island, up?

Mr. Bogle: I object to it on the ground that the witness has already stated that he was not on watch, and, therefore, he couldn't personally know what course she was on.

The Court: I do not recall that he did so state, Mr. Bogle. If he knows and can answer after looking at the log book counsel is entitled to have him do so, I believe. Are you able now to say what course or heading the vessel was on when that azimuth was taken?

The Witness: I couldn't say.

Q. What course was the “Denali” steering?
—You cannot say?

A. No.

Q. Was it taken from the north end of Vancouver Island, up north?

A. I think it was.

Q. Cape Scott is the north end of Vancouver Island, isn't it?

A. Yes.

Q. Doesn't your pilot house log book show that the “Denali” passed Cape Scott at 10:33 p. m. on May 17th?

(Testimony of Peter Albert Obert.)

A. Yes. [2014]

Q. So your story is that the westerly deviation that you allowed for was one which you found in the deviation book?

A. Yes, sir.

Q. And which was put there because you requested the second mate, or the captain, on the 17th, to take an azimuth to find out, isn't that right?

A. Yes, sir.

Q. And after you made that request of them they took the azimuth and put it in the book, is that right?

A. Yes.

Q. Now, the "Denali" was never on a course of North, or anywhere near North——

A. (Interposing) It wouldn't have to be.

Q. (Continuing)—from the time you made that request until you arrived at Triple Island Light, isn't that so?

A. How could he take it if she wasn't put on the North course?

Q. That is exactly the point. He couldn't take it unless the ship was on some course——

Mr. Long: (Interposing) Let the witness explain.

Q. (Continuing) Other than is shown in the pilot house log book of the "Denali".

Mr. Long: Let the witness explain.

(Testimony of Peter Albert Obert.)

The Witness: Why should it be shown, just for a few minutes? He could swing the ship around for a few minutes, put her on a heading north.

Q. You were not there at any time, were you?

A. No.

Q. While they were taking this supposed azimuth?

A. No. [2015]

Q. You do not know for how long they changed the course?

A. It wouldn't be very long.

Q. Any change of course is ordinarily entered in the log book?

A. No.

Q. When you are on a run like that?

A. No.

Q. Well, you were not in charge of the watch at the time, were you?

A. Not at that time.

Q. When it was being done?

A. At midnight, yes.

Mr. Long: May I make an objection? Counsel brought this up, and now he is arguing with the witness because he doesn't like the answer.

Mr. Ryan: I like the answer fine. I think the man is showing you up. Well, strike out what I just said.

Mr. Long: I do not want it stricken out.

The Court: It may be stricken out, and so ordered.

(Testimony of Peter Albert Obert.)

Q. (By Mr. Ryan) Now, if the "Denali" was at all times on the courses which are shown in the deck log book, up until she arrived at Triple Island Light, then no azimuth taken would give this supposed westerly deviation of which you saw an entry in the deviation book, isn't that so?

Mr. Long: That is argumentative, and it is objected to as speculative, argumentative, and not shown by the evidence or anything else.

The Court: The objection is overruled. He can ask this witness whether or not he did.

Mr. Long: Exception. [2016]

The Court: Exception allowed.

The Witness: If she didn't make her course how did she find her way all the way up to Triple Island without any trouble?

Q. Well, she was not on a north course at any time up to Triple Island, was she?

A. When I requested the second mate to take an azimuth on a North heading he did it. It would take more than five or six minutes to do it, would it?

Q. You do not know whether it was done?

A. I know it was done.

Q. Of your own knowledge?

A. I know it was done because I saw it in the book.

Q. And is that the deviation that you used?

A. Well, that is only one degree, that is all, which is nothing.

(Testimony of Peter Albert Obert.)

Q. And there is nothing in the log book showing that the "Denali" was on any such heading or course, is there?

A. No. Why should it be?

Q. There is nothing in there to even show that an azimuth was taken at that time, isn't that right?

A. That is not an azimuth book. That is the log book.

Q. Now, Captain, if you knew what the deviations were on the compasses of the "Denali" why did you ask the captain or the second officer to, in effect, put the ship on a course of North so that you could try to find out what her deviation was?

A. Because she had no heading on that before.

Q. There was none shown, no deviation——

A. (Interposing) We had no heading on that; we was not [2017] steering North.

Q. That is, there was no entry in the deviation book on a North heading?

A. Yes, there was.

Q. Before you asked the second mate or captain to get this azimuth and to put it down in the book?

A. That is right.

Mr. Long: Just a moment; he said something else a minute ago, and counsel broke in.

The Court: I know, but let it stand. The record will speak for itself.

Q. (By Mr. Ryan) When did you first realize that you were going to be the officer on watch taking this ship through Caamano Passage?

(Testimony of Peter Albert Obert.)

A. When I signed on with the rest of the crew.

Q. Did you know at that time that it would come on your watch, the time when the ship was going through Caamano Passage?

A. I didn't know exactly, no.

Q. When did you first know that?

A. Oh, on the way up.

Q. When you were off the west coast of Vancouver Island?

A. Well, after we started out through the Straits.

Q. And it was shortly after that that you looked at the deviation book and said, "Well, here we are going up through Caamano Passage and we don't know what the deviation is on the heading." and you spoke to the captain about it, or the second mate, and said "Find out what the deviation is on that; there is a course we are going to take"—is that right? [2018]

A. It is a long time——

Mr. Long: (Interposing) I am getting perplexed as to these statements in the record——

The Court: The objection is sustained.

Mr. Long: I ask that the statement be stricken.

The Court: It will be stricken. At this point we will take the noon recess. This afternoon the Court will require that this cross examination be promptly closed.

(Whereupon a recess was taken until 2:00 o'clock P. M., November 4, 1937.) [2019]

(Testimony of Peter Albert Obert.)

November 4, 1937,

2:00 o'clock P.M.

Court convened pursuant to adjournment;
All parties present.

The Court: You may proceed. Captain Obert will resume the stand.

PETER ALBERT OBERT

resumed the stand for further examination.

Further Cross Examination

By Mr. Ryan:

Q. What was the practice and custom of the Alaska Steamship Company in May, 1935, with respect to the frequency of adjusting compasses on vessels in the Alaska trade?

The Court: If you know.

Q. (By Mr. Ryan) If you know.

A. To have them adjusted if you noticed anything wrong. If the master finds anything wrong with the compass, to have it adjusted.

Q. What, in your opinion, as an experienced master mariner, was safe practice with respect to the frequency of adjusting compasses on vessels in the Alaska trade?

A. To have them adjusted if you found anything wrong.

Q. I am asking you about the frequency—the period of time involved. Within what period of time should compasses be adjusted on vessels in the

(Testimony of Peter Albert Obert.)

Alaska trade, in your opinion as an experienced master mariner?

A. Well, at any time in two, three, four or five years, if [2020] there is anything wrong.

Q. Now, on August 2, 1935, in the United States Attorneys' office in Seattle, in the presence of the Assistant United States Attorney Pellegrini, and Ben F. Nelson, and the other persons I have described to you in previous questions today and yesterday, did you or did you not make the following statement after first being first duly sworn to tell the whole truth?

Mr. Bogle: What page?

Mr. Ryan: Pages 41 and 42.

Q. (By Mr. Ryan) This is with reference to deviation cards for compasses.

“Q. That is the usual practice, to have those cards made about every year on every ship, isn't it?

A. Well, sometimes you adjust them twice.

Q. Twice a year?

A. That is if something goes wrong.

Q. Naval vessels adjust them about twenty times a year.

A. That is all they have to do just about all the time.

Q. In merchant vessels it is once or twice a year?

A. Once a year.

(Testimony of Peter Albert Obert.)

Q. To let it go you think is just taking chances?

A. Yes”.

Did you or did you not so state under oath at that time?

A. If there is anything wrong——

Q. (Interposing) Answer that question, please. Did you [2021] or did you not answer it in that way—did you or did you not so state under oath at that time?

A. If there is anything wrong with the compasses, have them adjusted.

The Court: The question is, did you say what he said was said at that time?

The Witness: I don't think that I did, Your Honor.

Q. (By Mr. Ryan) What is your answer?

A. I don't think that I did.

Q. You deny it, is that it?

(Witness does not answer)

Q. Do you say that the answers which you purport to give, as shown in what I have read to you, are false in fact, is that right?

A. I said that if anything was wrong—if you found anything wrong with the compasses——

Q. (Interposing) Oh, no. Just answer the question. Do you say that the answers that you gave there, if you gave the answers that you gave there——

(Testimony of Peter Albert Obert.)

A. (Interposing) I don't remember half of the answers that I gave there.

Q. Well, will you say yes or no to that. Will you say that this was false that you said there?

A. I don't remember.

Q. I say, do you say—

A. (Interposing) I don't remember.

Mr. Bogle: I do not think that he understands the question, Mr. Ryan.

Q. (By Mr. Ryan) Do you state—what is the fact— [2022] now, I will ask you this individually.

“Q. That is the usual practice to have these cards made about every year on every ship, isn't it?”

And you then said under oath,

“A. Well, sometimes you adjust them twice.

Q. Twice a year?

A. That is, if something goes wrong”.

A. Yes.

Q. Did you or did you not so testify?

A. Yes, I did.

Q. Under oath?

A. Certainly.

Q. All right. Now, did you further state under oath at that time and under those circumstances, in the United States District Attorney's office on August 2, 1935,

“Q. In merchant vessels it is once or twice a year?”

(Testimony of Peter Albert Obert.)

A. Once a year.

Q. To let it go you think is just taking a chance?

A. Yes."

Did you or did you not so state under oath at that time?

A. No, I don't think so. I don't remember making that statement.

Q. You don't remember making that statement?

A. No.

Q. Do you deny that you made that statement?

A. I don't remember that I made that statement.

Q. Do you deny that you made that statement?
[2023]

A. I say that I don't remember that I made it.

Q. All you say is that you don't remember it?

A. Yes.

Q. Is that it? You don't deny it?

A. I don't remember it.

Q. All right. We will take it in parts. Did you or did you not state under oath at the time and place, and to the persons that I have described, on August 2, 1935, in the United States Attorney's office here as follows:

"Q. In merchant vessels it is once or twice a year?

A. Once a year".

(Testimony of Peter Albert Obert.)

Did or did you not so testify or state under oath at that time?

A. I might have said, if there was something found that there was something wrong with it.

Q. Did you not give the answer to the question as I have stated it, and at the time and place that I have described to you?

(Witness does not answer)

Q. Do you deny that you said that?

A. Yes.

Q. You deny that?

Mr. Bogle: Well, he has said that. He has answered that.

Q. (By Mr. Ryan) And you say that that answer is false, is that it, in fact?

A. It is not right.

Q. It is what?

A. It is not right. [2024]

Q. It is not right?

A. And that is why I would not sign that thing. There are a good many things in there that are wrong.

Q. I will ask you now, in merchant vessels what is the usual practice with reference to having deviation cards drawn up with references to compasses—with reference to the frequency of drawing up deviation cards? What is the usual practice on merchant vessels?

A. To have them posted up.

Q. Yes. And how frequently is that adjusting and drawing up of those deviation cards done ac-

(Testimony of Peter Albert Obert.)

According to the usual practice on merchant vessels?

A. Any time that it is necessary to have a compass adjuster to put the cards up.

Q. Every year or not?

A. If necessary, yes.

Q. Yes.

A. If there is found to be something wrong with the compass, to have it adjusted.

Q. Well, how often? What is that usual practice? How often is that done? How often is that considered necessary under usual practice on merchant vessels with reference to adjusting compasses?

A. Yes.

Q. Well, how often?

A. It is the practice to have it adjusted if there is anything found wrong.

Q. Yes, but how often is it found necessary under usual practice to have adjustment made of compasses on [2025] merchant vessels?

A. Well, every year, or every other year, or every two years—anything that is necessary when something is found wrong with them.

Q. When were the compasses—well, I will strike that. What is the usual course of vessels sailing Seattle to Metakatla, Alaska?

A. Well, there are a good many courses; a good many ways to go.

Q. Well, the usual route, I am asking you. What is the usual route of vessels sailing from Seattle to Metakatla?

(Testimony of Peter Albert Obert.)

A. Most of the passenger ships take the inside route.

Q. About 90% of them go up the inside passage, don't they?

A. I would not say that.

Q. Sailing from Seattle to Metakatla.

A. I would not say that.

Q. What?

A. I would not say that.

Q. Did you or did you not state under oath on August 2, 1935, in the United States Attorney's office in Seattle, to the persons and under the circumstances that I have described to you before today, as follows—

Mr. Long: (Interposing) What page?

Mr. Ryan: Page 39.

Q.

“Q. What is the usual course from Seattle up to Metakatla?

A. There is actually a lot of courses. The usual route?

Q. Yes. The usual route is the outside or the [2026] inside?

A. The shortest is the outside.

Q. What is the usual route?

A. Most of them go the inside.

Q. About 90% of them go up inside?

A. Yes, I think they do”.

Did you or did you not so state under oath?

A. Yes, sir.

(Testimony of Peter Albert Obert.)

Mr. Long: Will you read the next question and answer?

Mr. Ryan: That is all, Your Honor.

The Court: Is there any redirect? If you wish to read some other part of that record in that connection and want to call his attention to it at the present time, you may do so.

Mr. Bogle: Yes, Your Honor, I do.

Redirect Examination

By Mr. Bogle:

Q. Captain, how many times did you testify in connection with the loss of the "Denali" before the United States Local Inspectors at Seattle?

A. Once.

Q. Did you testify on the investigation of this loss?

A. Yes, sir.

Q. Were you subsequently charged with negligence?

A. Yes, sir.

Q. Did you testify on your trial?

The Court: On that question? [2027]

Q. (By Mr. Bogle) Did you testify on your trial before the Inspectors?

A. Yes, sir, I testified on the trial before the Inspectors.

Q. So how many times did you appear before them?

A. Just once.

(Testimony of Peter Albert Obert.)

Q. Didn't you appear at your trial?

(Witness does not answer)

Q. I say, didn't you appear at the time of the trial?

A. Yes, sir, certainly.

Q. Didn't you testify in the investigation before the trial?

A. Before the Inspectors?

Q. Yes.

(Witness does not answer)

Q. Do you understand what I am asking you, Captain?

A. No, I don't remember that.

Q. Did you testify in the matter of the investigation of the loss of the Steamer "Denali" before the United States Inspectors on May 24, 1935?

A. Yes.

Q. I will ask you if on that investigation you testified as follows:

"Q. Was there a deviation book on the 'Denali'?

A. Yes, sir.

Q. Did you look at the deviation book?

A. Yes, sir.

Q. Did it seem to be kept in a proper, ship-shape manner?

A. Absolutely."

Did you so testify? [2028]

A. Yes, sir.

Q. Is that testimony true?

A. Yes, sir.

(Testimony of Peter Albert Obert.)

Q. At the same hearing, Captain, did you testify as follows:—

Mr. Ryan: (Interposing) Would you mind giving me the page?

Mr. Bogle: This is page 3 of my own copy, Mr. Ryan.

Q. (By Mr. Bogle) Captain, at the same hearing, did you testify as follows:

“Q. As a matter of fact you never noticed any distinctive change in your compass?

A. No, sir”.

Did you so testify?

A. Yes, sir.

Q. And at the same investigation did you give the following testimony,

“Q. Prior to the vessel striking did the man on the lookout make any outcry?”

Mr. Summers: Please do not answer this question, Captain, before we have a chance to object.

Q. (By Mr. Bogle) And did you answer,

“A. No, he did have a light—Tree Point Light.

Q. How did it bear?”

Mr. Summers: No, I object to that—

Mr. Bogle: (Interposing) Just wait until I get through.

Q. (By Mr. Bogle)

“Q. How did it bear?

A. About a point, or a point and a [2029] quarter or a point and a half on the port bow”.

(Testimony of Peter Albert Obert.)

Now, did you so testify at that time and place?

Mr. Summers: I object to that, if the Court please, because counsel is limited on his redirect with reference to this testimony to matters which are purely explanatory with respect to which on cross examination an attempt was made to impeach him on similar testimony.

The Court: Do you recall whether this was touched upon on cross examination?

Mr. Bogle: Yes. Part of the same thing was read to him on cross, and in explanation of what his testimony was then I have a right to read the rest of it and ask him if that was his testimony. In other words, I am merely stating more than what was testified to or what was mentioned on cross examination.

The Court: It seems to me that there was something said about a light that was read yesterday from the excerpt of his testimony.

Mr. Bogle: Yes.

The Court: But I do not recall about an outcry. However, the objection is overruled.

Mr. Summers: My point simply is this, that so far as I recall it, at least there was nothing read to this witness from the testimony before the Inspectors with reference to these lights. In other words, there was cross examination as to when he saw certain lights, but not by way of impeachment from this testimony. [2030]

The Court: Objection overruled.

(Testimony of Peter Albert Obert.)

Mr. Bogle: Did he answer that?

The Reporter: No.

Q. (By Mr. Bogle) Did you so testify before the Inspectors?

A. Yes, sir.

Mr. Ryan: Just one moment, please. I would ask Your Honor's indulgence. There was just one question that I intended to ask the witness. Just one short question.

The Court: Would you permit that, Mr. Bogle?

Mr. Bogle: Yes.

The Court: So that your redirect can be responsive to that?

Mr. Bogle: Yes, sir, I would be glad to do that.

Further Cross Examination

By Mr. Ryan:

Q. On August 2nd, 1935, in the United States Attorney's office in Seattle, did you or did you not state under oath—

The Court: (Interposing) What page—

Q. (Continuing) to the persons,—

The Court: (Interposing) What page?

Mr. Ryan: Pages 33 and 34.

Q. (Continuing)—to the persons that I have described to you, the Assistant United States Attorney Pellegrini, and Ben F. Nelson, as follows:

“Q. Suppose she had not been laid up at all, [2031] how often, in your opinion, should the compasses be adjusted?

(Testimony of Peter Albert Obert.)

A. Once a year.

Q. Once a year?

A. Yes."

Did you or did you not so state under oath?

Mr. Bogle: Wait a minute. I want to object to that.

A. Well, it is the same thing. If you found anything wrong with the compasses you have them adjusted.

Q. Did you or did you not state under oath as I have read it to you—did you or did you not state under oath at that time as I have read it to you?

A. I don't think that that is correct.

Q. What?

A. I don't think that that is correct.

Q. Do you deny——

A. (Interposing) Yes.

Q. (Continuing) ——that you so stated under oath?

A. Yes, sir.

Q. You deny it?

A. Yes, sir.

Mr. Ryan: That is all.

The Court: Does that finish your further cross?

Mr. Ryan: Yes, Your Honor. Thank you very much.

Redirect Examination (Continued)

By Mr. Bogle:

Q. Well, picking up that very point there, Captain, I will ask you if the statement which has been

(Testimony of Peter Albert Obert.)

read to you is [2032] in fact true or untrue?

A. I didn't quite understand that.

The Court: I think you had better read it again so that he can have it clearly in his mind.

Q. (By Mr. Bogle) This statement,

“Suppose she had not been laid up at all, how often in your opinion should the compasses be adjusted?”

A. Once a year”.

If you gave that testimony, or made that statement, is that true or untrue?

A. It is not true.

Q. Now, Captain—did you—did you in your trial before the United States Inspectors give the following testimony:

“Q. In taking bearings, laying out courses and in taking the course, tide, and current with the utmost care there is still an item of uncertainty?”

A. There is bound to be”.

Did you give that testimony before the United States Inspectors upon your trial?

A. Read it over again, please; I didn't get it.

Q.

“Q. In taking bearings, laying out courses and in taking the course, tide, and currents with the utmost care there is still an item of uncertainty”.

(Testimony of Peter Albert Obert.)

That was the question. And the answer was,
“A. There is bound to be”.

A. Yes.

Q. And I will ask you if in the course of your trial before the Inspectors you gave the following testimony: [2033]

“Q. You hauled the ship off to starboard to avoid getting too close to that reef?

A. To get over to the starboard shore, yes, sir.

Q. Whether you entered the course in the book or not, would it change the fact that you actually did haul her off, the absence of an entry in the log book had nothing to do with the disaster?

A. I wouldn't think so, it would be in my favor on account of the current”.

Did you give that testimony?

A. Yes, sir.

Q. Now, Captain, how many times did you appear in Mr. Pellegrini's office or in the office of the Assistant United States Attorney in this building in Seattle?

A. How many times?

Q. Yes.

A. Just once.

Q. When was the first time you ever met Mr. Pellegrini?

A. I never met him before that time—before

(Testimony of Peter Albert Obert.)

that time that I was up there, but when that time was, I don't remember the date.

Q. You never met him before this time that this statement was taken?

A. No, sir. That is the first time that I met him.

Q. Had you or had you not previously given him a statement in connection with the "Denali"?

A. I never heard of it.

Q. Captain, what are the circumstances under which you [2034] appeared in the office of the Assistant United States Attorney on the occasion referred to by Mr. Ryan?

A. Well, I was at home at work, and they called me up—Mr. Pellegrini called me up from the United States District Attorney's office. [2035]

Q. Did he tell you who he was?

Mr. Summers: Do not lead him.

Mr. Ryan: Let the witness state. I ask that the witness be allowed to answer that.

Mr. Bogle: I thought he had.

Mr. Ryan: No. I think you interrupted him.

Mr. Bogle: Will you read the question? (Question read as follows:

"Q. What are the circumstances under which you appeared in the office of the Assistant United States Attorney on the occasion referred to by Mr. Ryan?")

(Testimony of Peter Albert Obert.)

Q. (By Mr. Bogle) What was your answer?

A. Well, I was at home at work and they called me up, Mr. Pellegrini called me up from the United States Attorney's office.

The Court: Is there anything else you wanted to add, as to how it occurred, in answer to that question?

The Witness: Well, yes. They asked me if I could come down to the office, and I said "No, I cannot, because I am doing a little work." Well, they said "It is absolutely necessary that you do come down here. We will send for you."

Q. They would what?

A. They would send for me. Well, I commenced thinking—I thought to myself I had better go down. I didn't know what was up. So they said "We will send a taxi for you", and I said, "All right, I will come down." They asked me how long it would take, and I said about half an hour. So I went upstairs and changed my clothes, and when I [2036] came down the taxi was there and took me down to the office there, and Mr. Ryan, Mr. Pellegrini—

Q. (Interposing) The taxi brought you to what office?

A. Down here to the attorney's office.

Q. Did you pay the taxi man?

A. No, sir.

Mr. Ryan: Let him go on and state, and do not interrupt him.

(Testimony of Peter Albert Obert.)

Mr. Bogle: I think I should be entitled to examine the witness.

The Court: The objection is overruled.

Mr. Bogle: I am trying to get the story out.

Q. (By Mr. Bogle) Then you went up to what room, do you remember?

A. It was the United States Attorney's office. I don't know what room it was.

Q. It was in this building we are in now?

A. Yes.

Q. Who did you find there?

A. Mr. Pellegrini, Mr. Ryan, Mr. Stedman, and a couple more that I don't know who they were.

Q. Did anyone tell you the purpose of calling you to that office?

A. Not until I came down there.

Q. And then what did they tell you?

A. They wanted to get some statement in regard to the stranding of the "Denali".

Q. Did Mr. Pellegrini or any one tell you who Mr. Ryan was representing?

A. No, sir. [2037]

Q. Did they tell you he was or was not a United States Attorney?

A. Well, yes.

Q. What did they tell you?

A. Well, they didn't say much about that.

Q. What did they say, Captain?

A. They said he was an Assistant United States Attorney.

(Testimony of Peter Albert Obert.)

Q. Mr. Ryan?

A. No; Mr. Pellegrini.

Q. I say, did they tell you who Mr. Ryan was?

A. No, sir.

Q. Captain, at the time you went up there was your license in effect or had it been suspended?

A. Suspended.

Q. Did you tell the gentlemen that?

A. No, sir.

Q. Did they inquire of you as to whether you were still employed by the Alaska Steamship Company?

A. I don't remember that.

Q. Now, Captain, at the time of making that statement was anything said to you to indicate to you the purpose of the statement? In other words, whether it affected a suit or whether it affected you, personally?

A. No, sir.

Q. What was your own judgment from the circumstances?

A. I didn't really know what was going to happen.

Q. Did you think it was affecting your license?

Mr. Summers: That is leading.

The Witness: Yes.

Mr. Summers: He has already said he didn't know. [2038]

The Court: Objection overruled.

Q. (By Mr. Bogle) Then, Captain, do you re-

(Testimony of Peter Albert Obert.)

member what time of day this was, morning or afternoon?

A. I think it was in the afternoon, if I remember right.

Q. Captain, who conducted most of the examination?

A. Mr. Ryan.

Q. The transcript shows about two and one-half pages, or three and one-half pages by Mr. Pellegrini, and some fifty odd pages by Mr. Ryan.

A. Yes, sir.

Q. Was there anyone asking questions besides Mr. Ryan?

A. Mr. Pellegrini.

Q. Did Mr. Stedman ask any questions?

A. I don't remember that.

Q. Now, Captain, I notice in this transcript you were asked a great many times whether you had a conversation with Capt. Healy.

A. Yes, sir.

Q. I will ask you to state, to the best of your recollection, whether, in fact, you had any conversation with Capt. Healy, and if so when and the substance of the conversation.

Mr. Ryan: Just a minute; this witness was examined fully and asked about what the fact was, what his recollection was, and all that sort of thing, on that very point, and the testimony is in the record.

Mr. Bogle: That was on cross examination.

(Testimony of Peter Albert Obert.)

The Court: The last that occurred on it was in cross examination, about some conversation.

Mr. Ryan: And off Victoria. [2039]

The Court: Off Victoria.

Mr. Ryan: Yes, Your Honor.

The Court: That was with Capt. Healy.

Mr. Bogle: That was in cross examination, Your Honor.

The Court: Yes. Objection overruled.

Mr. Bogle: I ask that the question be read.

(Question read as follows:

“Q. I will ask you to state, to the best of your recollection, whether, in fact, you had any conversation with Capt. Healy, and if so when and the substance of the conversation.”)

The Witness: Well, this time, this afternoon, I didn't have much of a conversation. When we came in there was general conversation up there, and I asked him about the card; I said, “You have the old cards”, and he said “Yes”. Outside of that there was nothing more said, only everything in general, the course of the ship, or something like that, or the weather.

Q. (By Mr. Bogle) Was that statement made by you as a criticism?

Mr. Summers: That is objected to as leading.

Mr. Ryan: Yes; I object to that as leading. I mean I really do.

The Witness: No, sir.

(Testimony of Peter Albert Obert.)

The Court: It is leading. Try to avoid leading as much as you can, or at least exhaust his recollection in some other manner.

Mr. Bogle: Well, I will withdraw the question. It is pretty hard to do that.

The Court: I do realize that situation, but at least [2040] exhaust his recollection first.

Q. (By Mr. Bogle) I will ask you if at that time and place this question was asked you:

“Q. Whose duty was it to ask the company to adjust the compass?

A. The Captain should have done that.”

Did you give that testimony?

A. Yes, sir.

Q. I will ask you if this statement was made there, page 8:

“Q. There was no compass adjuster on board at any time?

A. No.

Q. Had you any means on board of adjusting the compass?

A. Sure.

Q. What do you mean by that?

A. We had the instruments to get the sun-down and get the bearings, and take an azimuth.”

Did you make that statement?

A. Yes.

Q. Is that a true statement?

(Testimony of Peter Albert Obert.)

A. Yes, sir.

Q. Now, Captain, in connection with this question that was asked you as to the custom with reference to making compass adjustments, has your entire experience of 39 years been in Alaska waters?

A. Yes, sir.

Q. And what other companies have you been working for during that time, other than the Alaska Steamship Company? [2041]

Mr. Summers: That has been already covered.

The Court: Yes. That objection is sustained.

Q. In your experience I will ask you if it was the custom of any company that you have ever worked for in those 39 years that you have operated in Alaska waters, for the company to order an adjustment of the compass at any time, except upon the request of the master?

Mr. Ryan: That is objected to.

The Witness: No, sir.

Mr. Ryan: That is objected to as leading, and, second, it is not proper redirect. It was covered on direct examination.

The Court: Objection overruled.

Q. What is your answer, Captain?

A. No, sir.

Q. I will ask you whether you know of any other company operating vessels out of Seattle—now, whether you know of your own knowledge—operating vessels out of Seattle, whether there was any

(Testimony of Peter Albert Obert.)

custom of the company adjusting the compasses at any periodic time, or at any time, other than upon the request of the master?

A. No, sir.

Mr. Ryan: Just a minute; that is objected to on the ground, first, that he should be asked whether there is such a practice of other companies here, and, second, if he knows what it is, the practice of the other companies.

Mr. Bogle: I have asked him if he knows.

The Court: The question is leading, and I do think the objection is proper, and it is sustained. You can [2042] lay the foundation, Mr. Bogle, by asking him certain questions.

Q. (By Mr. Bogle) Do you know the custom in Seattle harbor, other than on the vessels you have worked on, with reference to adjusting compasses?

A. Well, anyone has a compass adjusted if it is necessary, if the master of a ship, any ship——

Q. (Interposing) Wait a minute. First, I asked you if you knew what the custom was of other companies operating vessels out of Seattle, other than the companies you have worked for?

A. I don't know of anything.

Q. I do not quite understand you.

The Court: No; he anticipates, and it is pretty hard to get—well, proceed. You can repeat the question. (Last question read.)

Q. (Continuing) With reference to adjusting compasses.

(Testimony of Peter Albert Obert.)

The Court: Do you know it or don't you?

The Witness: No, I don't.

Q. (By Mr. Bogle) You do not know that?

A. No.

The Court: You can ask him if he knows what the custom is of other companies, other than the Alaska Steamship Company.

Mr. Bogle: That is the question I just asked him.

Mr. Ryan: And he said he didn't know.

The Court: I think you will find the record not so.

Mr. Ryan: May I ask that the last question and answer be read?

The Court: They may be read. (Record read as follows: [2043])

“Q. First, I asked you if you knew what the custom was of other companies operating vessels out of Seattle, other than the companies you have worked for?

A. I don't know of anything.”)

The Court: Now, then, in that connection he has not stated what the custom was, or whether he knew of the custom of companies other than the Alaska Steamship Company, and I think you may ask him that, if you wish.

Mr. Bogle: I think he has answered the question as to the Alaska Steamship Company.

The Court: I think so.

(Testimony of Peter Albert Obert.)

Q. (By Mr. Bogle) Do you know what the custom with reference to periodic adjustment of compasses was of companies other than the Alaska Steamship Company?

The Court: Operating in Alaska, or for Alaska.

The Witness: To have them adjusted.

Q. Do you know what the custom of the Alaska Steamship Company is?

A. Yes.

Q. Do you know what the custom of other companies is?

A. No.

The Court: Very well. That covers it.

Q. Now, Captain, I will ask you if in this statement before the United States Attorney, following the portion read to you by Mr. Ryan, you made the following statement, page 11, referring to compasses:

“Q. Because, if it is not adjusted, the ship having lain there with all the iron and steel and all this riveting going on, and then taking on a [2044] lot of iron on board, the deviation card would not be of much use, would it?”

A. No. But even if the compass was adjusted, and then you go and pile in boilers, machinery, engines and trucks, it throws it out again.”

Did you give that testimony?

A. I don't remember?

Q. Is that testimony correct, is it true?

(Testimony of Peter Albert Obert.)

A. No.

Q. In other words, if you had your compass adjusted and afterwards put on an iron cargo would your deviation cards be correct?

Mr. Ryan: Objected to on the grounds——

The Witness: (Interposing) No, sir.

Mr. Ryan: (Continuing) ——it tends to impeach his own witness.

The Court: Objection overruled.

Mr. Bogle: I will read it again:

“A. But even if the compass was adjusted, and then you go and pile in boilers, machinery, engines and trucks, it throws it out again.”

Mr. Ryan: Objected to on the ground that the witness has just testified fully on it, and it is a clear attempt to impeach his own witness, and it is repetition.

Mr. Bogle: It is not such an attempt. I have the right to ask the question, Mr. Ryan.

The Court: The only thought that occurs to the Court is the possibility of the witness—is whether or not the witness understood the question and answer previously read to him. That is the only thing. I think it may be [2045] repeated again upon that basis, to see whether or not he understood it. (Record read as follows:

“Q. In other words, if you had your compass adjusted and afterwards put on an iron cargo would your deviation cards be correct?

A. No, sir.”

(Testimony of Peter Albert Obert.)

The Witness: No, sir.

Q. (By Mr. Bogle) Captain, did you make this statement:

“Q. What, in your opinion, was the cause of the stranding?

A. The only thing I could not figure out was the current. There was an enormous current in the Passage.

Q. The force and direction of the water are quite well established, are they not?

A. You can never tell how much they run. The only ones who know the current are the fishermen who hang around. I would not know how it ran until the tide went down.”

Did you make that statement? Do you understand it, Captain?

A. Yes.

Q. Did you make that statement?

A. Yes.

Q. Is that statement correct?

A. Yes, sir.

Q. I will ask you if you made this statement, at the same time, page 26:

“Q. Was it very dark?

A. I could not see Zayas Island. I could not see her before 15 or 20 minutes before that.

[2046]

Q. Before what?

A. Before I got to the end of the island.

(Testimony of Peter Albert Obert.)

Q. At what time by the clock did you see Zayas Island first?

A. Well, I could not see the loom of it from five or six miles away. I might see it a little closer than that."

And again——

Mr. Ryan: (Interposing) How about reading the next question, as part of that same testimony?

Mr. Bogle: Well, that is a strange request, Your Honor.

The Court: Well each counsel can call the attention of the witness to any question or answer that they desire.

Mr. Bogle: I will read it:

"Q. At what time?

A. I don't know."

Then further down:

"Q. How many minutes before did you see it?

A. Well I don't know. I would not say. Maybe half to three-quarters of an hour before that. I could see the haze but not the plain land. It was kind of a peculiar night. It was like a mirage. I saw Dundas Island shortly after passing Triple Island prior to that time, and then she disappeared again.

Q. How many miles could you see at 2:30 a. m., May 19?

A. Maybe two or three miles.

(Testimony of Peter Albert Obert.)

Q. Do you think you could not see further than that? [2047]

A. Not plain. I could see the loom, but not plain."

Did you give that testimony?

A. Yes.

Q. Is that true?

A. Yes, sir.

Q. I will ask you if you made this statement, page 28:

"Q. Now, if the compass had been adjusted before the 'Denali' sailed, you would have known positively what the deviation was on all your headings?

A. Yes, sir.

Q. You would know it more positively than you knew it on the trip?

A. Not any better than we could take it ourselves. We could take an azimuth just like an adjuster."

Did you give that testimony?

A. Yes, sir.

Q. I will ask you if on page 30 you gave this testimony, and referring to your conversation with Capt. Healy:

"Q. Which way was she running, to the right or to the left, or both ways?

A. I don't remember. Of course, it was pretty high tide. You try to steer magnetic, and you have the tides to contend with."

(Testimony of Peter Albert Obert.)

Did you give that testimony?

A. To the Inspectors?

Q. No, no; in the United States Attorney's office here. Do you understand the question?

A. Read it again, please. (Question read.) I had no such conversation. [2048]

The Court: The question that counsel put to you was whether or not you testified as he read to you, at that time.

Q. Do you remember giving that statement?

A. No, sir.

Q. Did you have tides in the vicinity of Race Rocks?

A. There are always more or less tides.

Q. Did you on the afternoon of May 16th?

A. Yes, I believe I did. We had a strong flood tide, I believe.

Q. I will ask you if you gave this testimony—

Mr. Ryan: (Interposing) Where—at the Steamboat Inspectors'?

Mr. Bogle: I beg your pardon; not testimony, but a statement, in the United States Attorney's office, page 35:

“Q. There were a lot of reasons why the ‘Denali’ should have had her compass adjusted before sailing, isn't that right?

A. Yes, but it would not have been any good if she had been adjusted.

Q. Why not?

A. On account of the iron, because going back she would have more deviation.”

(Testimony of Peter Albert Obert.)

Did you make that statement?

The Witness: I don't quite get that.

The Court: Captain, it is not a question now whether that is true or not, but the question is whether or not you then stated that.

Mr. Bogle: Will you read it to him? Maybe he can [2049] get it clearer. (Last question read.)

Q. (By Mr. Bogle) Do you or do you not remember making that statement?

A. Yes; I think I did.

Q. And then this statement:

“Q. But after the iron was put on board, there was every reason in the world why the ship should be swung by the compass adjuster and the deviation determined before she sailed?

A. Yes, but they never do that.”

The Witness: No.

Q. (Continuing):

“Q. There was very strong reason for doing that in this case before sailing, isn't that right?

A. Maybe.

Q. Well, that is well known to every master mariner?

A. They don't do that. They do that when the ship is light, and when they put iron and steel on board, that changes it.

Q. That is what would happen?

A. That is what happened last year on the 'Tanana'.”

(Testimony of Peter Albert Obert.)

Did you give that statement, or do you remember?

A. Yes. We had the "Tanana" adjusted after that.

Q. Captain, shortly before the statement read to you by Mr. Ryan from the same transcript, the same document, page 39—

Mr. Ryan: (Interposing) Is this in the United States Attorney's office?

The Court: Yes; the same, on page 39.

Q. (By Mr. Bogle) In connection with the outside and the [2050] inside course, immediately following what he read, I will ask you if you made this statement:

"Q. What is the safer, the outside or the inside?"

A. It is just as safe on the outside."

A. I would say the safest; you get away from all the rocks and reefs.

The Court: That is sufficient. There is no question before you.

Q. Then on page 40 of the same document:

"Q. Then when you get up there, there are no lights, and then when you get in the Caamano Passage it is much more dangerous than the inside,—all you have is dead reckoning.

A. Dead reckoning wouldn't go very good.

Q. Dead reckoning isn't very accurate?

A. You have to see what you are doing."

(Testimony of Peter Albert Obert.)

Did you make that statement?

A. Certainly; you have to do piloting.

Q. I mean did you give that statement; answer yes or no.

A. I don't remember that.

Q. You do not remember?

A. I have gone over it so many times I don't remember half of it.

Q. Well, is that statement correct?

A. I don't know.

Q. I will ask this question, Captain; in navigating a passage such as Caamano Passage, do you rely solely upon your compass?

A. No, sir.

Q. What do you rely upon? [2051]

Mr. Summers: Just a moment; I object to that——

Mr. Ryan: I object to that as wholly leading.

Mr. Bogle: I do not see anything leading about it.

The Court: I think the Court can rule upon the admissibility of the evidence, but counsel should have an opportunity to state his objection.

Mr. Ryan: I object to the question on the ground that is wholly leading and suggestive, and I ask that the question be read.

Mr. Summers: And it is not redirect, either, Your Honor. It was covered on direct.

The Court: It has been covered a number of times, and on that basis the objection is sustained.

(Testimony of Peter Albert Obert.)

Mr. Bogle: If Your Honor please, it is to meet the very part of this transcript which they have already read in the record.

The Court: You have the transcript, Mr. Bogle, and you are now examining on redirect. The Court will give you an opportunity to submit to him the transcript again on that basis, that possibly he did not understand the question previously.

Mr. Bogle: Read the previous question and see if he understands it. (Record read as follows:

“Q. Then on page 40 of the same document:

‘Q. Then when you get up there, there are no lights, and then when you get in the Caamano Passage it is much more dangerous than the inside,—all you have is dead reckoning.

A. Dead reckoning wouldn’t go very good.

Q. Dead reckoning isn’t very accurate?

[2052]

A. You have to see what you are doing.’ ”

Q. (By Mr. Bogle) Did you or did you not make that statement, Captain?

A. Yes.

Q. Is that statement correct?

A. Yes.

Q. Page 49 of the same document:

“Q. When you take the outside passage, you have to rely on the compass more?

A. Sure.

(Testimony of Peter Albert Obert.)

Q. More dead reckoning?

A. There are a lot of times you don't bother about the course. You line her up in the mid-channel. Of course you can't keep the course on account of the current, and we have to change now and then."

Mr. Ryan: I cannot find that. Was that before the Inspectors or in the United States Attorney's office? I cannot find it.

Mr. Bogle: Well, if the Court please——

The Court: Counsel's question is in good faith. Can you advise counsel where it is?

Mr. Bogle: I told him that it was page 49 of the same document. Read the question. (Last question read.)

Q. (By Mr. Bogle) Did you make that statement?

A. Yes.

Q. Is that statement true?

A. Yes, sir. [2053]

Q. Captain, when you finished these proceedings and Mr. Ryan had completed his questioning, just tell us what happened.

The Court: Where?

Q. (By Mr. Bogle) In the same proceeding, in the United States Attorney's office, when Mr. Ryan had completed his interrogation, just tell us what happened then.

A. You mean after I was through there?

(Testimony of Peter Albert Obert.)

Q. Yes, that is right.

Mr. Summers: If Your Honor please——

A. (Interposing) Well, there is nothing happened excepting——

Mr. Summers: (Interposing) Now, if Your Honor please——

The Court: He says that nothing happened. Now, you may make your objection.

Mr. Summers: I want to make this objection. This witness had admitted and denied various statements read by Mr. Ryan and Mr. Bogle. He now is asked to recite what happened after that. It is apparent that he did make a statement of some sort. I object to what happened after making the statement as being entirely irrelevant, incompetent and not rebuttal or proper redirect examination.

The Court: I am going to hear it, and if I think it is not material I will entertain a motion to strike it.

Mr. Bogle: What was the question?

(Questions read as follows; and answer read as follows: [2054]

“Q. Captain, when you finished these proceedings and Mr. Ryan had completed his questioning, just tell us what happened; in the same proceeding, in the United States Attorney’s office when Mr. Ryan had completed his interrogation, just tell us what happened then.

A. Well, there is nothing happened excepting——”)

(Testimony of Peter Albert Obert.)

The Court: He said, "there is nothing happened excepting". Now, finish your answer if you have not finished your answer.

A. Well, I was asked how much money I had earned, or what it was. I was offered pay for it.

The Court: You were offered pay for the time coming down to the United States Attorney's office?

A. Yes, sir.

Q. (By Mr. Bogle) Then you left?

A. Not that I expected any pay.

Q. Then you left?

A. Yes, sir.

Q. Did you ever go back?

A. No, sir.

Q. How long after that, Captain, was it before this written transcript was presented to you by Mr. Nelson?

A. I believe it was the next day.

Mr. Summers: I object to that as not proper rebuttal, or redirect examination, rather, and on the ground that it is irrelevant and immaterial.

The Court: Objection overruled.

A. I think it was the next day, if I remember right. [2055]

Q. And did you at that time read the transcript?

(Witness does not answer)

Q. Did you sign it?

A. I don't remember the date that it was presented to me.

Q. Did you sign it?

(Testimony of Peter Albert Obert.)

A. No, sir.

Q. Were you requested by Mr. Nelson to sign it?

A. Yes, sir.

Q. Why didn't you sign it?

A. Well, because there was quite a few items in there that I didn't remember that I testified to.

Q. Were there any items in there that were not true?

A. Yes, sir.

Q. Did you so advise Mr. Nelson?

A. Well, he was there, and I told him.

Q. Did you ever sign it?

A. No, sir, I never signed it.

Q. Now, Captain, have you had any experience of your own in this body of water from a point abeam of Triple Island through Caamano Passage?

The Court: Before the occasion of this stranding?

Mr. Bogle: Well, before or since.

The Court: All right.

Q. (By Mr. Bogle) Before or since.

A. Yes, sir. Before and after.

Q. What has been your personal experience? I will strike that. During your thirty-nine years of experience in Alaska, have you been through these waters prior to the trip on the "Denali"?

A. Yes, sir. [2056]

Mr. Ryan: I object to that on the ground that it is not proper redirect. It has been gone over and over again on direct examination.

A. Many times.

(Testimony of Peter Albert Obert.)

The Court: Are you leading up to the purpose and intention of inquiring on redirect examination touching the effect of those currents, or something else about those currents?

Mr. Bogle: Your Honor, counsel asked him questions to the effect that he should have accepted this chart as gospel. I think I am entitled to show, which I did not show on direct, that he had personal experience here, as a result of which he knows that the currents are not accurate or regular.

The Court: Do you wish to state your objection?

Mr. Ryan: I object to that as not proper redirect. This man was asked questions about currents and about that passage on direct examination. He was asked about this chart and a lot of general questions about the whole subject. Now, this just is not proper redirect examination and I do not see why the case should be re-opened for that purpose to allow him to testify to that.

Mr. Summers: And I want to make the objection upon the further ground that that is at a time and at a location not material to the inquiry in issue here.

The Court: The objection is overruled.

Mr. Summers: Exception.

The Court: Exception allowed.

Mr. Bogle: Will you read the question?

(Question and answer read as follows: [2057])

“Q. During your thirty-nine years of experience in Alaska, had you been through these waters prior to the trip on the ‘Denali’?”

A. Yes, sir.”)

(Testimony of Peter Albert Obert.)

Q. (By Mr. Bogle) Of your own personal knowledge and experience on previous trips do you know whether or not the currents are regular as to time and regular as to force——

A. (Interposing) Quite irregular.

Mr. Summers: Just a minute, Your Honor. I object to that as not proper redirect examination.

The Court: Objection overruled.

Mr. Ryan: We make the same objection that we made heretofore.

The Court: Yes.

Mr. Ryan: And on the same grounds as stated heretofore.

The Court: Yes, objection overruled.

Mr. Ryan: May we have that objection on the same grounds go to the whole line of this examination?

The Court: Yes. The objection will be overruled.

Q. (By Mr. Bogle) Captain, from your personal experience is there any current coming through Brown's Passage?

A. There is a strong current coming out of Brown's Passage at ebb tide.

Q. And what is the general direction of that current?

A. Southwest—west to southwest.

Q. Captain, have you had any experience with another vessel recently, indicating the condition and the force of the [2058] currents in these waters between Triple Island and Caamano Passage?

(Testimony of Peter Albert Obert.)

A. Well, I have been up and down there this summer about five or six times.

Q. Were you there——

A. (Interposing) —and it was the same way, coming both ways.

Q. Were you there on a vessel on ebb tide?

A. Yes, sir.

Q. What vessel was that?

A. The “Mt. McKinley”.

Q. And what type of vessel is that?

A. Well, she is rather a big ship.

Mr. Ryan: What ship was that, Your Honor?

The Court: The “Mt. McKinley”.

Q. (By Mr. Bogle) What speed?

A. 14 knots average speed.

Q. Well, what was your experience with that vessel in these same waters as indicating the direction and irregularity of the tide?

A. Just this one trip this summer we came up Hecate Straits there and we were eleven miles off of Triple Island and we had her in mid-channel after we got the Triple Island Light abeam—had her up there, and put her on the track——

Q. (Interposing) What track was that?

A. I don't remember what track we steered. About North by West.

The Court: Mr. Bogle, I am not satisfied that this testimony about one collateral specific sailing is proper. [2059]

Mr. Bogle: I think it is.

(Testimony of Peter Albert Obert.)

The Court: Now, this is after, is it not?

Mr. Bogle: Yes.

The Court: Of course, I realize that it may be possible that an experience after may be pertinent to show that conditions were the same or similar at the time in question here. But if you took the converse of that and tried to show that it was changed since, I am sure that that would not be allowed and would be objectionable. I am going to sustain the objection as to this question with reference to a specific sailing. He can tell what he has gained from his experience touching the regularity or irregularity of these currents, however.

Mr. Bogle: In order to preserve the record, may I make an offer of proof?

The Court: Yes.

Mr. Bogle: I offer to prove by this witness that this summer on an ebb tide, similar to the one on the night of the "Denali" stranding, taking his departure from off Triple Island, setting his course for mid-channel, the ebb current, on a 14 knot boat after they had covered a distance of eleven miles on that course, set her over so that she was headed to the westward of Zayas Island, showing the strength of that current, and they had to bring her back three points to the right to get her into the channel. I just want to complete the record by making that offer.

The Court: The petitioner's offer to produce the proof, just stated is denied by the Court. [2060]

(Testimony of Peter Albert Obert.)

Mr. Long: Exception, Your Honor.

The Court: Exception allowed.

Mr. Long: It is understood that the proof would be introduced by the witness now on the stand and now sworn, is it?

The Court: Yes.

Mr. Long: That this all goes to this witness' testimony?

The Court: Yes.

Mr. Long: Exception.

The Court: Exception allowed.

Q. (By Mr. Bogle) Captain——

Mr. Ryan: (Interposing) Of course, that was an offer of proof, and I would like to add to my remarks or objection that on the statement of counsel the circumstances have not been proved to be sufficiently similar to those of the "Denali" on this voyage to be material, and on the further ground that it has not been shown that this witness' position on the vessel at the time was such that he would in the ordinary course acquire this information as part of his duties, or that he used any proper or sufficient instruments or methods with which to ascertain any of the substantial part of the fact with which the supposed inference is being sought to be drawn from him.

Mr. Bogle: Well, I would amend the offer to state that I would prove that he was pilot on this vessel and occupied the same position on it as he did on the "Denali"; that it was ebb tide; that the physi-

(Testimony of Peter Albert Obert.)

cal conditions were substantially the same except that it was [2061] day time instead of night.

The Court: As I understand it the "Mt. McKinley" was proceeding at about 14 knots per hour?

Mr. Bogle: Yes.

The Court: That is part of your proof?

Mr. Bogle: Yes. And I will also offer to prove that under that speed the tide would have much less effect on it than she would at nine miles an hour.

The Court: The ruling of the Court is supplemented after the objections are supplemented, the Court ruling that the offer of proof is denied.

Mr. Long: Exception, please.

The Court: Exception allowed.

Q. (By Mr. Bogle) Now, Captain—

The Court: (Interposing) That, however, Mr. Bogle, does not prevent you—well, strike that out. You may proceed.

Q. (By Mr. Bogle) Captain, when did you make your first change of course to the right with reference to the time when you could first see the loom of Zayas Island and Dundas Island?

Mr. Ryan: I object to that on the ground that that was certainly gone into on direct, and that it is not proper redirect.

The Court: Objection to the question is sustained.

Q. (By Mr. Bogle) Captain, in your experience as a pilot in Alaska waters is or is it not customary to enter in the log book just when you are piloting in restricted waters?

(Testimony of Peter Albert Obert.)

Mr. Ryan: That is objected to on the ground that that was gone into on direct. The witness was shown the [2062] log book and the practice and all that sort of thing gone into.

Mr. Bogle: No, Your Honor.

The Court: If it was gone into, I desire to hear his statement upon it again. The objection is overruled.

Mr. Bogle: Read the question.

(Question read as follows:

“Captain, in your experience as a pilot in Alaska waters is or is it not customary to enter in the log book just when you are piloting in restricted waters?”)

A. No.

Mr. Ryan: I am objecting further on the ground——

The Witness: (Interposing) No, sir.

Mr. Ryan: (Continuing) —that the conditions that they ask about are not similar to this under which the “Denali” was navigating on this night of the stranding. He has not been asked to assume that it was dark and hazy, and the other conditions, that are obviously relevant to any answer to that question.

Mr. Bogle: I will amplify it a little, then.

Q. (By Mr. Bogle) Captain, in navigating the inside passage of Alaska, say from Seattle to Juneau, about how often would you go through pas-

(Testimony of Peter Albert Obert.)

sages of the width or less than the width of Caamano Passage?

Mr. Ryan: That is objected to on the ground that what is done in the inside passage has no relevancy, in view of the undisputed testimony here that this vessel was in the outside passage.

Mr. Bogle: I am trying to get the practice now. [2063] Do you object to it because——

The Court: (Interposing) The objection is overruled.

Mr. Bogle: Read the question.

(Question read as follows:

“Captain, in navigating the inside passage of Alaska, say from Seattle to Juneau, about how often would you go through passages of the width or less than the width of Caamano Passage?”)

A. That is what we are going through nearly all the time.

Q. (By Mr. Bogle) Well, is it—the inside passage——

A. (Interposing) Very narrow channels.

Q. Is it a matter—is that piloting or navigating by dead reckoning on the inside passage?

A. Piloting, running by local knowledge of the channels.

Q. Then I asked a question that in navigating, where you are piloting rather than navigating by dead reckoning, when you make changes and rectify

(Testimony of Peter Albert Obert.)

your course and your position, is it customary to put those in your log book?

A. No, sir, if you did you would have your log book full of changes.

Q. About how many courses would you take, Captain, on the inside passage, piloting from Seattle to Juneau?

Mr. Ryan: I object to that as going too far afield.

The Witness: About 800 or 900 courses.

Mr. Ryan: This vessel was never at any time in the inside passage on this voyage.

The Court: The objection is sustained to that and [2064] the question and answer are stricken.

Q. (By Mr. Bogle) Captain, after the stranding of the "Denali" could you see the current alongside the stranded vessel?

A. Yes, sir.

Q. What would you say as to the strength of that current——

Mr. Ryan: (Interposing) That is objected to.

Q. (Continuing) —at that time.

Mr. Ryan: That is objected to on the ground that that obviously calls for speculation or guess by the witness. All that he has asked and assumed is that he looked over the side at the surface of the water.

Mr. Bogle: That is not all of it.

Mr. Ryan: That is not any basis upon which any inference could be drawn that would be of any assistance to the Court in this matter.

Mr. Long: What is your objection?

(Testimony of Peter Albert Obert.)

The Court: Objection overruled.

Mr. Bogle: Read the question.

(Question read as follows:

“What would you say as to the strength of that current at that time?”)

Mr. Summers: I object to that as not proper re-direct examination.

The Court: Objection overruled.

A. I would say three or four knots an hour in the middle of the tide there.

Mr. Summers: What was that answer?

(Answer read)

Q. (By Mr. Bogle) How soon after she stranded did you leave? [2065]

A. About a half an hour.

Mr. Summers: We object to that.

Mr. Bogle: This is merely preliminary.

The Court: I do not think anything preliminary is necessary. Just ask him the question that you have in mind.

Q. (By Mr. Bogle) How did you get from the vessel to the shore?

A. In the lifeboats.

The Court: I do not recall anything, Mr. Bogle, on cross that entitles you to examine him on re-direct on this.

Mr. Bogle: All right. I will withdraw the question. That is all.

(Testimony of Peter Albert Obert.)

Recross Examination

By Mr. Ryan:

Q. Counsel for the petitioner read to you from page 26 of your statement given under oath on August 2, 1935, in the United States Attorney's office about the time when you could see the loom of Zayas Island.

A. Yes, sir.

Q. Now, after the question and answer which he read you were you or were you not asked the following question and did you not give the following answer,

“Q. About what time?

A. I don't know that”.

Did you or did you not so testify? You were still under oath. [2066]

Mr. Bogle: Where is that in the transcript?

Mr. Ryan: That is on page 26.

Mr. Bogle: I object to that as not being proper recross examination.

Mr. Ryan: I am just giving the next question and answer after the interrogation that you made, Mr. Bogle.

Mr. Bogle: I read that.

Mr. Ryan: No, you didn't. You stopped right there.

Mr. Bogle: No, I did not.

The Court: Objection overruled.

Mr. Ryan: Yes, you did.

(Testimony of Peter Albert Obert.)

Mr. Bogle: I did not.

The Court: Objection overruled.

Q. (By Mr. Ryan) Did you or did you not so state under oath?

A. What was the question?

The Court: Read the question.

(Question read as follows:

“Now, after the question and answer which he read you were you or were you not asked the following question and did you not give the following answer,

‘Q. About what time?

A. I don’t know that’.

Did you or did you not so testify? You were still under oath’.)

Mr. Bogle: I submit, Your Honor, that I read that to him as part of my question.

The Court: He can call his attention to it here.

[2067]

A. I don’t get that.

Mr. Ryan: Well, I don’t want to take up too much time. Will you read the question again to him, Mr. Reporter. I think that it is clear enough.

(Question read)

A. Is that in regard to what time I saw Zayas Island, is that it?

Q. (By Mr. Ryan) Yes.

Mr. Bogle: I submit that the only way——

Q. (By Mr. Ryan) Yes. You could not even give an approximation of the time, could you?

(Testimony of Peter Albert Obert.)

The Court: Just wait a minute. That is not a proper response, Mr. Ryan. Advise the witness as to what subject you were referring to.

Mr. Ryan: Yes.

The Court: That is the witness' inquiry of you.

Mr. Ryan: Yes, I see.

Q. (By Mr. Ryan) I am referring to the subject of about when you could see the loom of Zayas Island. About the time when you could see the loom of Zayas Island. And you were asked the time and you said, "I don't know at what time". Then you went on further and said, in answer to the question, "About what time?"—you answered to that, "I don't know that".

A. About 1:30 or somewheres around there.

Q. Yes, but did you state under oath at that time as I read it to you?

The Court: In effect that you don't know.

Q. (By Mr. Ryan) In effect that you don't know that?

The Court: At that time. [2068]

By Mr. Ryan:

"Q. About what time?

A. I don't know that".

The Court: Do you remember whether or not you said that?

The Witness: I don't remember that.

Q. (By Mr. Ryan) You don't deny that?

A. I say I don't remember it.

(Testimony of Peter Albert Obert.)

Q. All right. Now, on page 28 of that statement under oath made by you on August 2, 1935, in the United States Attorney's office, did you or did you not state under oath as follows:

“Q. Yes, but the adjuster actually takes a series of bearings?

A. He swings the ship all around”.

Mr. Bogle: Now, just a minute, if the Court please——

Mr. Long: (Interposing) That is improper recross, if Your Honor please. He went into all that on cross examination.

The Court: Wait until he finishes and then I will hear from you, Mr. Long.

Mr. Ryan: This immediately follows what Mr. Bogle read to the witness—the very next question and answer.

The Court: Did you originally in your cross read this to him?

Mr. Ryan: No, I didn't read it to him.

The Court: Or any part of it?

Mr. Ryan: No.

Mr. Long: That was read before. [2069]

Mr. Ryan: No. Mr. Bogle has read two or three questions and then he left this out.

Mr. Long: You read it before.

Mr. Ryan: This was left out by Mr. Bogle.

The Court: Did you read that on your original cross examination?

Mr. Ryan: No, I did not.

(Testimony of Peter Albert Obert.)

The Court: All right. You may proceed.

Q. (By Mr. Ryan) At that time, on August 2, 1935, did you make this statement under oath to the persons and under the circumstances that I have described,

“Q. Yes, but the adjuster takes actually a series of bearings?

A. He swings the ship all around.

Q. He swings the ship all around, so that you get checks from a great many sources?

A. Because they always vary. There are none the same.

Q. It isn't quite fair to compare that kind of an adjustment with a single azimuth taken on one heading?

A. That is right. Of course, I would not depend on my own bearings, unless there is no trouble to find out what the deviation is”.

Did you or did you not so state under oath at that time——

A. (Interposing) I don't remember.

Mr. Long: Just a minute. I want to get——

The Witness: (Interposing) I don't remember ever making such a statement, because it is absolutely wrong.

Mr. Long: That was covered before. [2070]

The Court: It seems to me that I have heard that read before.

The Witness: You asked that before. I heard that read before.

(Testimony of Peter Albert Obert.)

Mr. Ryan: I am sure that I did not read it before. I am sorry if I did.

The Court: However, the witness has answered and said that he did not remember making such a statement. Proceed with your next question.

The Witness: I don't remember making any such statement.

Mr. Long: I will withdraw any objection that may appear in the record on this, Your Honor.

The Court: Very well.

Q. (By Mr. Ryan) Did you or did you not on August 2, 1935, in the United States Attorney's office, under the circumstances that I have described—

Mr. Long: What page?

Mr. Ryan: This is set out at page 35 of the transcript of his statement.

Q. (By Mr. Ryan) Did you or did you not on August 2, 1935, in the United States Attorney's office under the circumstances that I have described testify as follows:

“Q. But after the iron was put on board—”

This immediately follows what Mr. Bogle read on redirect examination—

“Q. But after the iron was put on board, there was every reason in the world why the ship should be swung by the compass adjuster and the deviation determined before she sailed?

(Testimony of Peter Albert Obert.)

A. Yes, but they never do that.

Q. There was very strong reason for doing that in this case before sailing, isn't that right?

A. Maybe''.

Did you or did you not so state under oath at that time?

Mr. Bogle: That is not recross, and I object to that. That is identically word for word with what I read following up what he had covered on his cross, on my redirect.

Mr. Ryan: That is where Mr. Bogle stopped. He didn't read that.

Mr. Bogle: I absolutely did read that.

The Court: Objection sustained.

Mr. Summers: If Your Honor please, if it can be developed here that in answer to one counsel he said, "Yes" and in answer to another counsel he said, "I don't remember", it would certainly affect his veracity.

The Court: You may proceed. The ruling of the Court just made will stand.

Mr. Ryan: Exception.

The Court: Exception allowed.

Q. (By Mr. Ryan) On August 2, 1935, at the United States Attorney's office, under the circumstances that I have described, and to the persons that I have indicated present, did you or did you not state under oath as follows, at pages 39 and 40 of the transcript,

(Testimony of Peter Albert Obert.)

“Q. What is the safer, the outside or the inside?

A. It is just as safe on the outside.

Q. It is equally dangerous, about, is that right? [2072]

A. Well, they are different, of course.

Q. The outside passage as compared with the inside, which is the more dangerous?

A. As far as the outside passage is concerned, you have lots of room; on the inside, you have not. Of course, you are in narrower channels, but you can see the land all the time; on the outside you can see land only on one side.

Q. Until you get to Caamano Passage?

A. Yes.

Q. Then when you get there, you haven't the benefit of lights that you have on the inside?

A. We have lights on the inside.

Q. It is really more dangerous on the outside passage?

A. That particular distance for about 140 miles, may be a little bit. Of course, along Vancouver Island you have lights”.

Did you or did you not so state under oath at that time?

A. I don't remember making all those statements.

Q. Do you deny that you made that statement?

(Testimony of Peter Albert Obert.)

A. Well, some of them are just as safe on the outside as on the inside—even better.

Q. Did you or did you not state there under oath that for that particular distance of about 140 miles up through Caamano Passage it may be a little more dangerous than on the inside passage?

A. No, I didn't say that it was dangerous. I never did say [2072½] that it was dangerous.

Q. Then I will take it piecemeal. Did you state—

The Court: (Interposing) Mr. Ryan—

Q. (By Mr. Ryan) I don't want you to—

The Court: (Interposing) Mr. Ryan, considering the amount of time that has already been indulged in on this thing, I am going to give you five more minutes for the purpose of reading excerpts from that transcript and other statements.

Mr. Ryan: Well, I think I can finish before that. That is all.

Mr. Bogle: That is all.

The Court: You may be excused from further testifying as a witness in this case, Captain, unless you are later called.

The Witness: Thank you, Your Honor.

(Witness excused)

The Court: At this time we will take a ten minute recess.

(Recess) [2073]

The Court: I ask all of those connected with the trial to try now, especially, to devise such measures as may be calculated to expedite the trial all you can, at this stage especially. You may call your next witness.

WILLIAM CLEASBY

called as a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bogle:

Q. Will you state your name, please?

A. William Cleasby.

Q. What is your business or profession, Mr. Cleasby?

A. Licensed mariner.

Q. What licenses do you hold?

A. Unlimited Chief Mate's license.

Q. How long have you held a Chief Mate's license?

A. Seven years.

Q. How long have you been going to sea, Mr. Cleasby?

A. 26 years.

Q. How many years have you been operating on Alaska vessels?

A. Off and on for about 25 years.

Q. How long have you been operating on vessels of the Alaska Steamship Company?

(Testimony of William Cleasby.)

A. Off and on for the last 25 years.

Q. Were you on the steamship "Denali" on the voyage upon which she was stranded on Zayas Island?

A. I was.

Q. In what capacity?

A. Chief Mate. [2074]

Q. By whom were you employed as chief mate on the "Denali"?

A. By Mr. Tracy.

Q. Do you remember the date that you joined the ship?

A. It was May 13th, I believe.

Q. Where was the ship at the time?

A. The West Seattle yards.

Q. Had you previously been shipmates with Capt. Healy?

A. Yes; several times.

Q. Had you previously been shipmates with Capt. Obert?

A. Yes; I was shipmates with him the year before.

Q. As chief mate what were your duties upon joining the ship at West Seattle on May 13th?

A. Well, the morning I came aboard the second officer and myself tested out the whistle and the steering gear and the telegraph—with him—and then myself I looked over the holds, the cargo gear, lifeboats and general cargo equipment of the ship.

(Testimony of William Cleasby.)

Q. In what condition did you find the steering gear, telegraph and whistle?

A. All in good shape.

Q. Did you make any requisition for equipment, deck equipment, on this voyage?

A. Yes, sir.

Q. Among the officers who inspects the charts, navigating instruments, and makes out requisitions for any new charts or new books or navigating instruments?

A. That is considered the second-officer's work.

Q. And on this voyage who was the second officer?

A. Mr. Larson.

Q. Did he hand you such a list? [2075]

A. He did.

Q. Did you make a requisition for material?

A. Yes. I added it to my own and signed it and gave it to Mr. Murphy, I believe.

Q. I will hand you Petitioner's Exhibit No. 47, showing you the fifth page, and ask you if the signature to the left hand side "W. Cleasby" is yours?

A. Yes; that is my signature.

Q. Did you obtain the material that is shown on that requisition, except that which is crossed off? Will you examine it?

A. Yes; I got all that, I received it all.

Q. On the following page, is that your signature?

A. It is.

(Testimony of William Cleasby.)

Q. Did you receive aboard the "Denali" the equipment requested on that page?

A. It was all received.

Q. And on the seventh page, is that your signature?

A. That is mine.

Q. And the eighth page?

A. That is my signature.

Q. Did you actually, of your own knowledge—can you testify that you received all this equipment aboard the "Denali" on the voyage in question?

A. I did.

Q. Mr. Cleasby, where was your license first issued?

A. Seattle.

Q. When was it first issued?

A. In February, 1929.

Q. As first mate? [2076]

A. No; second mate.

Q. When was your first mate's license issued?

A. 1931.

Q. By the Inspectors' office in Seattle?

A. No; Hoquiam, Washington.

Q. Have you your license with you?

A. Yes, sir (showing).

The Court: Mr. Cleasby, I think in your case we will probably experience some difficulty in hearing your words, and I want you to try to bear that in mind and speak as clearly and distinctly as you can at all times.

(Testimony of William Cleasby.)

The Witness: I will.

Mr. Bogle: It may save the record a little bit if I can show this license to counsel and ask them if they will stipulate it into the record, so that we will not have to put it in evidence.

Mr. Ryan: Yes.

The Court: Upon consent of counsel it may be copied into the record as the license of this witness, in effect substantially in its present terms as at the time of the stranding of the "Denali".

(First page)

| | |
|---------------|-------------------|
| "C. Form 871 | File No. L. 14670 |
| Serial Number | Issue Number |
| 61440 | 2, 3 |

United States Department of Commerce
Bureau of Navigation and Steamboat Inspection
License to Mate of Ocean or Coastwise Steam
and Motor Vessels

This is to certify that William Cleasby having given satisfactory evidence to the undersigned United States Local [2077] Inspectors Bureau of Navigation and Steamboat Inspection, for the district of Seattle, Wash., that he is a skillful navigator and can be intrusted to perform the duties of Chief Mate on Steam and Motor Vessels of any gross tons, upon the waters of any Ocean is hereby licensed to act as such Chief Mate on Steam and Motor Vessels for the term of five years from this date.

(Testimony of William Cleasby.)

Given under our hands this 8th day of October, 1936.

DANIEL B. HUTCHINGS

U. S. Local Inspector of Hulls

WILLIAM M. CAMPBELL

U. S. Local Inspector of Boilers

O Form 1240.

(Second page)

Signature of holder of license William Cleasby (Thumb print)

Date of birth Nov. 29, 1897.

Place of birth Canada

Naturalized

Date of Naturalization Nov. 6, 1907 (Mother)

Place of Naturalization Nome, Alaska

By what Court Mother's marriage to American

Naturalization Certificate No. Citizen
on above date

Present address Seattle Hotel, Seattle

Passed visual examination Oct. 8, 1936

Visual examination on file in the office of Seattle

DANIEL B. HUTCHINGS

WILLIAM M. CAMPBELL

(U. S. Local Inspectors
issuing license.)"

Q. (By Mr. Bogle) Mr. Cleasby, at what time did the ship leave West Seattle on the morning of May 13th?

(Testimony of William Cleasby.)

A. I think it was about 7:30 in the morning.

Q. What were your particular duties from the time the vessel [2078] left the West Seattle yard until she sailed on the 16th?

A. To see that everything was in shape for loading cargo, the general equipment of the ship, the upkeep of the ship, and the stores on board.

Q. You are the ship's executive officer, are you?

A. Yes.

Q. Are you in charge of the deck crew, the unlicensed deck crew?

A. Yes.

Q. Did you have a full crew as required by your certificate, deck crew?

A. Yes; a full crew.

Q. Did you have any duties with reference to navigation while the vessel was shifting around the harbor of Seattle, from the 13th to the morning of the 16th?

A. No, not in connection with navigation.

Q. In what condition was the ship's gear, the running gear and deck equipment, when she sailed from Seattle on the 16th?

A. It was all in good shape.

Q. When the vessel left Pier 2 on the morning of the 16th were you on watch?

A. I was.

Q. Do you remember what time she sailed?

A. About 5:30.

Q. Where did she go from Pier 2?

A. Off of West Point, to load powder.

(Testimony of William Cleasby.)

Q. When you arrived off of West Point did you load powder?

A. We did. [2079]

Q. In what way? How was it loaded?

A. With No. 2 gear.

Q. I mean, was it from a dock——

A. From a boat.

Q. What size boat?

A. Well, a small boat, about 50 or 55 feet long, a small wooden boat.

Q. Where was that boat moored?

A. On the starboard side, abreast of the foremast.

Q. Did you load powder from more than one boat?

A. Two boats.

Q. Do you remember about what time you finished loading powder from the second boat?

A. Well, it would be after 8:00 o'clock sometime.

Q. Mr. Cleasby, while you were loading powder, after arrival off West Point, do you know what the captain and second officer were doing, or did you see them?

A. Well, they were up taking bearings, on the bridge.

Q. What was the ship doing during that time?

A. This is on the second powder boat?

Q. No; from the time you arrived, first arrived off of West Point.

A. Well, on the morning I know around 7:00 o'clock they were taking bearings. We had a little

(Testimony of William Cleasby.)

way on the boat, had to have a little way on the ship in order to swing the ship to take their bearings.

Q. Was the ship swinging during that time?

A. Yes; she swung during that time.

Q. Did you have any duties with reference to the loading of the powder? [2080]

A. Yes; I was in charge of it.

Q. After these Alaska freighters leave the Port of Seattle what are your duties with respect to cargo?

A. Well, I am in full charge of the loading and the unloading after we leave Puget Sound.

Q. At all Alaska ports?

A. At all Alaska ports.

Q. Were you engaged in the loading of this powder?

A. I was.

Q. Did you have any conversation with the captain of either of the powder boats?

A. I don't remember having any conversation with the captain of the first boat, but the last boat, I asked him if it was all right for us to go ahead slow while they were swinging the ship, and he said it was all right, and he said he was going to Kingston, anyway, and I said "That is fine." I said that about the time we finished loading we would be about off Kingston, and that would help him on his way, and at the same time it would help out with the ship, by keeping a little way on her while they were swinging the ship.

(Testimony of William Cleasby.)

Q. Where did you drop the second powder boat?

A. It was off of Kingston somewhere.

Q. Now, Chief, after you finished loading this powder, and on the voyage to the time of the stranding, that is, during the 16th, 17th and 18th, did you stand any navigation watch?

A. No, no regular watch. I am not supposed to stand a watch on that run. I have enough to do looking after the freight. But in spare time I used to spell off the captain on his [2081] watch, stand part of his.

Q. On this particular trip that we are interested in, Mr. Cleasby, did you stand any watch on the bridge?

A. Yes; I stood a couple of watches.

Q. Did you make any entries in the log book?

A. I am pretty sure I did at some place.

Q. Take Claimants' Exhibit A-4. You might look through that and see if any of those entries are in your handwriting.

A. Yes.

Q. You identify some of that as your handwriting, and if so, on what date?

A. Yes; here is some of my handwriting right here (showing).

Q. On what date, please?

A. May 17th, 1935.

Q. At what hour?

A. That is up to midnight—no, up to noon, or at noon, I should say. I relieved the watch a couple of minutes early, and I filled in the 12:00 o'clock entry.

(Testimony of William Cleasby.)

Q. Do you remember how long you stood the watch on that occasion?

A. I think about four hours.

Q. Did you stand watch on any other occasions, to the best of your recollection?

A. Yes; I think I stood the evening watch the same night.

Q. For about what length of time?

A. About four hours.

Q. During the time that you were on watch what was the condition of the vessel's navigating equipment and gear, including her compasses and steering gear? [2082]

A. All in good shape.

Q. Was she making her courses properly?

A. Yes; she made her courses, all bearings taken checked out fine.

Q. Were you on watch at midnight of May 18th, when the vessel was abeam, or about abeam of Triple Island?

A. No.

Q. Were you on watch at the time she stranded?

A. No. I was asleep.

Q. Were you awakened by the stranding?

A. Yes; I woke up when she hit.

Q. What did you do?

A. I immediately went out on deck, and I went up on the bridge with the captain, and I went down then and took soundings.

(Testimony of William Cleasby.)

Q. Did you see the captain when you went on the bridge?

A. Yes; we met in the alleyway; we both got out at the same time.

Q. Did he give you any orders?

A. Yes; he told me to take soundings right away, and I took the soundings up to the bridge and reported them to him.

Q. You mean ship soundings, to see whether she was taking water?

A. In the bilges, yes.

Q. What did you find?

A. I found she was making water fast in No. 1 and No. 2.

Q. Did you make any report to the captain?

A. Yes. I notified the captain right away on the bridge, and he said "Take a bearing on Tree Point Light." [2083]

Q. Where were you at that time?

A. On the bridge.

Q. In the pilot house?

A. In the pilot house.

Q. Did you take a bearing on Tree Point Light?

A. I did.

Q. How did you take that bearing?

A. With the Hanson Bearing Board.

Q. What bearing did you get?

A. North by West.

Q. How did you determine that it was North by West?

(Testimony of William Cleasby.)

A. Well, after I took the bearing with the bearing board I laid a point and a half on the left hand side, I took the heading of the ship, looked in the compass and took the heading of the ship, and I knew then the bearing was North by West, because the ship's head was North $\frac{1}{2}$ East.

Q. The bearing board showed how much on the port bow?

A. A point and a half.

Q. At Tree Point Light?

A. At Tree Point Light.

Q. Did you look at the compass at that time?

A. I did.

Q. How was it heading?

A. North $\frac{1}{2}$ East.

Q. How did you determine the bearing?

A. By applying that point and one-half to the left, which would be North by West.

Q. Do you know whether or not Mr. Larson, the second officer, took any bearing? [2084]

A. Yes. The captain told him to take one at the same time, from the standard compass.

Q. But you didn't see him take it?

A. No; I wasn't up there when he took it.

Q. Were you present when he reported to the captain what the bearing was?

A. Yes; I was there when he returned.

Q. What did he report to the captain?

A. He says, "It is North by West."

Q. Did you lay that bearing down on the chart?

(Testimony of William Cleasby.)

A. Yes; I plotted it down on the chart, and it read right over the rock on which we were stranded.

Q. What did that indicate to you as to the condition of your compass at that time?

A. It showed the compass was just right, because if she hit a rock that small all the way from Tree Point she couldn't be out.

Q. What was the condition of the weather at that time?

A. Calm.

Q. And as to visibility?

A. The visibility was what I would say was pretty good. We could see Tree Point Light 14 miles off, and the land behind it.

Q. What can you say of Dundas Island?

A. Well, of course the light itself was deceptive from the angle we was laying on.

Q. What angle were you laying on? What do you mean by that?

A. Well, the angle that we entered the channel on. The way she was laying looked as if she was more mid-channel than she really was. [2085]

Q. That is, when you first came out?

A. Yes. I know Capt. Healy mentioned that it looked that way to him, too, and that is why he was so particular about taking a bearing.

Q. I will hand you Petitioner's Exhibit No. 34 and ask you if that correctly shows the wreck of the "Denali" as you saw it on that morning?

A. This is the morning after.

(Testimony of William Cleasby.)

Q. Oh, that is the morning after the stranding?
The morning of the 20th?

A. Yes.

Q. Does that show the condition of the channel as you saw it that morning, headed in this direction?

Mr. Ryan: That is objected to as leading.

The Witness: Well, I am looking at it the other way.

The Court: The objection is sustained.

Mr. Bogle: Well, he said that was the next morning.

Q. (By Mr. Bogle) How long did you stay aboard, Mr. Cleasby?

A. I don't know what time we did leave. Some time in the forenoon, the captain and myself and the third mate.

Q. Were you the last three to leave the boat?

A. We were.

Q. Mr. Cleasby, do you know what was done with the charts or navigating equipment?

A. Well, I know that the log book was given to the purser when he left, quite early, and then the rest of it was made up and put in the lifeboat.

Q. Did you have anything to do with putting them in the lifeboat?

A. Part of them I lent a hand on. I wouldn't swear for [2086]

Q. You think you did what?

A. I think I lent a hand.

Q. What lifeboat was it put in?

(Testimony of William Cleasby.)

A. I wouldn't know the number of it. It was the last one that left.

Q. Was it the lifeboat that you left the ship in?

A. Yes.

Q. Do you know what happened to the navigating gear and charts?

A. Well, when we got out to the Coast Guard Cutter it was pretty rough, and I remember that the third mate passed some of the stuff aboard, and he pretty near got caught in between the boat and the Coast Guard boat, and they told him to let it go and get aboard. Then afterwards, they dropped the boat astern and it swamped, it was so rough that they cut them adrift.

Q. Was all that gear lost?

A. Everything was lost that they took aboard the boat. I don't know how much they did salvage.

Q. Could you see the current after the vessel stranded, alongside the hull?

A. Yes. You could see it was running very heavy, because I went to look over the bow just a few minutes after we struck, and was taking soundings, and the rock was just showing through the water then. You could see the water running alongside of it.

Q. How long do you think that was after the stranding?

A. Oh, I would judge around 15 or 20 minutes.

Q. Do you know at what height of water that rock starts to bare? If you don't know, we can get it. [2087]

(Testimony of William Cleasby.)

A. I think it starts to dry at 12 feet, if I remember right.

Q. Did you try to row against that current at any time that morning?

A. Yes; when we left the ship, Capt. Healy, myself and the third mate, we tried to row against it, and we couldn't row against it, it was shoving us over against the island, and Capt. Obert's boat was coming out at the time and he had plenty of men in it, and he put some men in our boat to help us out. I know it was impossible for the three of us to row against the current.

Q. Which way was it running at that time, Mr. Cleasby?

A. She would be flooding at that time.

Q. I mean the direction of the current?

A. It would be running easterly.

Mr. Bogle: I think that is all.

The Court: At what point was it running easterly?

The Witness: After she started to flood.

The Court: I know, but you mean at or about the place of stranding?

The Witness: Yes; about the place of stranding.

The Court: Running easterly at the place of stranding, at the time you left the vessel?

The Witness: I couldn't say what time, exactly, we left. I don't remember what time we did leave the boat.

(Testimony of William Cleasby.)

The Court: How long was it after you got on deck, immediately after the stranding, about, if you can say how long it was?

The Witness: About 10:00 o'clock, I suppose.

The Court: In the forenoon, following the stranding [2088] in the early morning of that same forenoon, or that same day?

The Witness: That same day.

The Court: Do you know approximately the time of the stranding?

The Witness: About quarter to three.

The Court: In the early morning?

The Witness: Yes, sir.

Mr. Bogle: Was the tide ebbing or flooding at the time?

The Witness: Well, she was starting to flood by then.

The Court: Had its direction changed subsequent to the time of the stranding?

The Witness: Yes; the tide had changed by that time.

The Court: Going in a reverse, or generally speaking a reverse direction to that at which it was moving at the time of the stranding?

The Witness: Yes, sir.

Cross Examination.

By Mr. Ryan:

Q. You just looked down at the surface of the water, is that right, and looked at it?

(Testimony of William Cleasby.)

A. Yes.

Q. Well, when you are in the very immediate vicinity of a rock or reef there are always surface currents of that sort in that immediate vicinity, due to the reef, isn't that so?

A. If there is a tide running, yes. [2089]

Q. That wouldn't give any indication at all of what the direction of the current was, say a mile away, out in the open water, would it?

A. That is hard to say. I wasn't out there.

Q. You testified before the United States Steamboat Inspectors, didn't you, at the investigation of this case?

A. I was up there, yes.

Q. Did you tell the Steamboat Inspectors at any time that you were on watch at any time during this voyage?

A. I don't know as they asked me.

Q. Your best recollection is that you did not tell them, isn't that right?

A. I couldn't say, because I don't know whether he asked me or not. It would be there if he did.

Q. You say you relieved the master as the watch officer on the bridge?

A. I said I used to spell him off.

Q. On this particular day, May 17th, is that right?

A. Yes, the 17th.

Q. From what time to what time?

A. I know it was from 8:00 a.m. to noon.

(Testimony of William Cleasby.)

Q. From 8:00 a.m. to noon on May 17th you relieved the master as the watch officer on the bridge?

A. Yes, sir.

Q. So that if the master swore that he was standing watch on that watch as the watch officer that testimony is incorrect, isn't it?

A. Not necessarily. I was there merely to assist him, and if he deemed it was safe to leave me there he would do that. [2090]

Q. But the fact is he did leave you there, and he was not there himself, isn't that right?

A. Oh, he would be up there every once in a while. He never stayed away very long.

Q. How long were you personally on the bridge on May 17th, of the "Denali"?

A. I was there from 8:00 to 12:00 in the morning, in the forenoon. That I know. The writing is in the log book there to prove it.

Q. Where was the master?

A. He was around the ship.

Q. Not on the bridge?

A. Not all the time, no. He would come up every once in a while and have a look around.

Q. Who was on watch with you?

A. I think Mr. Larson might have been around.

Q. The second mate?

A. I won't say he was around all the time, but I know we used to be up there. If it was the evening watch or dark we used to be both together.

(Testimony of William Cleasby.)

Q. Didn't the second mate stand a watch regularly with the master?

A. Regularly with the master, yes.

Q. So that when you relieved the master on May 17 did the second officer stand the watch with you?

A. Sometimes he didn't stay from 8:00 to 12:00 in the morning. If he did it was of his own accord.

Q. Did he stay on the bridge or not on that day, May 17, 1935, between 8:00 a.m. and noon, if you know?

A. He might have been there part of the time. I won't swear [2091] for sure.

Q. Who was the navigating officer of the "Denali"?

A. The second officer.

Q. Well, every time the vessel was to take bearings on lights, or take azimuths, or anything of that sort, that would be done by the navigating officer, the second mate, wouldn't it?

A. Not necessarily. If he was not around I would take it myself.

Q. Yes, but I mean that is his job, isn't it, that sort of thing?

A. When he is on watch. It is any officer's job to do that. It doesn't have to be the navigating officer.

Q. Why did you say the second officer is the navigating officer of the ship?

(Testimony of William Cleasby.)

A. Well, that is a term of speaking, being as he generally looks at the chart and navigating equipment, and the sounding machines—that is generally considered the second officer's watch, and as such he is generally termed the navigating officer.

Q. And he takes the bearings and azimuths, and things of that sort, that are distinctly navigation, whether he is on definite watch or not, isn't that so?—unless he is asleep?

A. Not necessarily, no. Any officer is supposed to be able to do that.

Q. What do you mean by the second officer being on watch with you but not there all the time?

A. I said in the day time he wouldn't be there all the time, unless he did it on his own accord, because his watch [2092] would be up at 8:00 o'clock in the morning. If he stayed up after that it was of his own accord. He would just come around and maybe study or do some little job he wanted to do.

Q. He did stay on the bridge, though, when he was not on watch?—That is his regular watch, isn't that right?

A. Oh, not all the time.

Q. But practically all the time?

A. No, I cannot say that.

Q. Except when he was asleep, isn't that so, on the "Denali"?

A. No, I couldn't say that. In nice weather he used to go off at 8:00 o'clock in the morning.

(Testimony of William Cleasby.)

The Court: Let those present avoid making any signs by shaking of the head or other display of approval or disapproval of the witness' statements. Proceed.

Q. (By Mr. Ryan) Well, the second mate and the third mate stood watch and watch on the "Denali", didn't they?

A. How do you mean, watch and watch?

Mr. Bogle: Your Honor, I would like to have it clear that that was not referring to counsel.

The Court: Well, the Court will let the record show that that was nobody connected with the management of the proceedings.

Mr. Bogle: Thank you, Your Honor.

The Court: Among the spectators the Court observed some things which I do not wish this witness to see while he is testifying.

Q. (By Mr. Ryan) Now, who stood watch with the pilot on the "Denali"?

A. The third mate. [2093]

Q. And who stood watch with the master?

A. The second mate.

Q. If the master testified that you would relieve only for coffee do you contradict that testimony?

A. No. He never said that. I was listening to him. He said that I relieved the pilot for coffee in the afternoon.

Q. I see. So if Mr. Murphy testified that the custom of this company for a great many years had been that the chief mate should stand no watch,

(Testimony of William Cleasby.)

then that testimony, if he gave it, is incorrect, is that right?

A. No; that is correct. I stood that watch of my own will. When you are chief mate you are studying to be pilot, and naturally you get up there to learn. You cannot stay in your bunk and learn.

Q. Then you say you stood an evening watch on May 17th—who stood watch with you?

A. The second mate.

Q. He stood watch with you from 6:00 p.m. to midnight, didn't he?

A. I don't think I stayed up all the time. After it got dark the captain himself came up, I believe.

Q. So now your testimony is that you stood watch on the evening of May 17th only from 6:00 p.m. to dark, is that right?

A. I won't say 6:00 p.m., but somewhere around that time.

Q. About what time?

A. I made no notation, because the second officer keeps the log book. I could check up with my own writing there, but the second mate is on then, so naturally he would make the entries, and I wouldn't know for sure. [2094]

Q. Now, you testified that after the stranding you went up on the bridge, and the captain told you to take a bearing of Tree Point Light, is that right?

A. Yes, sir.

Q. What compass did you look at?

A. The steering compass.

(Testimony of William Cleasby.)

Q. Did you look at the standard compass?

A. No, sir.

Q. Did you know what the difference was between the steering compass and the standard compass?

A. I did shortly after, yes.

Q. What was the difference?

A. No difference at all. [2095]

Q. How did you take the bearing?

A. I took it with the Hanson Bearing Board and against the face of the window to hold it straight, and the bearing was a point and a half on the port side, the left hand side, and I looked at the heading of the ship and the compass, which was north and half east, so that would make the bearing a point and a half to the left or North by West.

Q. The captain says that you did not report to him the compass heading of the ship, and that all you took was a relative bearing from the bow around a point and a half.

Mr. Bogle: That is objected to.

Q. (By Mr. Ryan) If the captain so testified that was incorrect, is that right?

Mr. Bogle: I object to the form of the question.

A. Well——

Mr. Bogle: (Interposing) Just a minute, please. I object to the form of the question. He is referring to the captain's testimony. He should give us the page in the record and read it to us. Our recollection is that the captain did not so testify.

(Testimony of William Cleasby.)

The Court: Well, I cannot stop the case to have him refer to the record. He may state—as long as he is acting reasonably, and I assume that everybody is doing his best to act that way, I am going to let him propound the question, asking him was so and so done or was so and so said.

The Witness: What do you mean by “relative bearing”? The question is not clear to me at all.

[2096]

Q. (By Mr. Ryan) Well, I mean taking a bearing of an object and say that it bears a point and a half on the port bow.

A. Yes, I could.

Q. You don't have to look at the compass, do you? All you have to use is your bearing board, isn't that right?

(Witness does not answer)

Q. Now, the captain says that that is so, that you took that bearing.

A. The captain is mistaken.

Mr. Long: The captain did not say any such thing.

The Witness: I do not want to say that he is mistaken. He never said that because that is not what happened, because I took the bearing under the captain's orders. He would certainly know that I could not take a bearing without opening the compass with a Hanson Bearing Board—I could not take a bearing with a Hanson Bearing Board

(Testimony of William Cleasby.)

without looking in the compass to check it up afterwards.

Q. (By Mr. Ryan) Now, you know that that heading of the ship was a very important fact to know in connection with ascertaining the cause of this stranding, did you not?

A. Well, I know it now, yes, sir.

Q. You knew it at the time that you took it, too, didn't you?

A. Well, I won't say that. I was not thinking that.

Q. Why did you think that the bearing was being taken?

A. Why?

Q. Yes.

A. So as to check up exactly where we were. I remember [2097] conversing with the captain and he said we would look farther in the channel and he said, "Take a bearing on Tree Point Light and plot it off on the chart", and he sent the second officer off with the standard compass at the same time.

Q. Now, you never told the Steamboat Inspectors, when you were sworn to tell the whole truth about that, anything at all about taking this bearing, or that you knew the magnetic heading of the ship or the magnetic bearing of Tree Point Light right after the stranding, did you?

Mr. Long: I object to that as repetitious.

The Court: Objection overruled.

(Testimony of William Cleasby.)

Mr. Long: That having been gone into on cross examination.

The Court: Objection overruled.

A. Well, it is just like anybody else at the hearing, if they ask you a question they don't want you to tell them something else. If they ask you a question they want you to answer that question and not a lot of other things.

Q. (By Mr. Ryan) But you didn't tell them anything about that at all, did you?

A. I could not. They didn't ask me.

Q. They didn't ask you?

A. No, sir.

Q. Were you or were you not asked the following question, and did you not give the following answer at the investigation made by the United States Steamboat Inspectors in Seattle in May, 1935—it is on page 20 of the transcript that I have,

[2098]

“Q. As an officer of the ship have you any information which you may think to be of value about this wreck?

A. No, I cannot say that I have”.

Were you asked that question and did you give that answer under oath?

A. I suppose I did, if it is there.

Q. What?

A. I suppose I did, if it is there. I cannot remember.

(Testimony of William Cleasby.)

Q. Well, your best recollection is that you did, isn't it?

A. No. My best recollection is that I don't remember whether it was asked me or not.

Q. Do you deny that you made that statement—

A. (Interposing) No.

Q. (Continuing)—in answer to that question?

A. No, I don't deny that.

The Court: All right. Proceed and ask him another question. Let us expedite this examination.

Mr. Ryan: Yes, Your Honor.

Q. (By Mr. Ryan) Now, this conversation that you had with the master of the second powder boat, will you state in substance what was said by you during that conversation and what was said by him, as best as you remember it, while you were in the immediate vicinity of each other off West Point, just after leaving Pier 2 at Seattle?

A. I don't remember talking to the first powder boat at all.

Q. The second powder boat I am asking you.

A. Oh, the second powder boat.

Q. Yes.

A. I asked him if he would mind us going along as well, and [2099] he said, "No". He said not as long as we were going towards Kingston. He said that he was going to Kingston himself. And I said something to the effect about the captain wanted to have a little bit of way on the ship so as to be

(Testimony of William Cleasby.)

able to swing to check bearings, and he said it was fine and dandy. That was all there was to it.

Q. You are positive that you said that the captain wanted to swing the ship, are you, that you told him that?

A. It is a long while back to ask me to be absolutely positive of every word that I said. That is pretty near three years ago.

Q. Yes.

A. And to ask in a casual conversation every word that I said, that is a little bit too much to remember, every word.

Q. Well, now, isn't it a fact that you told the master of the second powder boat, "We are late and we are in a hurry and we want to keep on going", and, "Do you object to our proceeding ahead toward Alaska towing you slow ahead?" And did you or did you not——

The Court: (Interposing) Just propound that part of the question.

Mr. Ryan: Yes.

Q. (By Mr. Ryan) Did you or did you not make that statement to the master of the second boat?

A. No.

The Court: Proceed.

Q. (By Mr. Ryan) Are you positive about that?

A. I am sure about that. I know that we never mentioned that [2100] we were behind time.

(Testimony of William Cleasby.)

Q. But at any rate the reason for the slow speed ahead of the "Denali" while the second powder boat was loading cargo was that the "Denali" wanted to keep going ahead and not the powder boat, isn't that right?

A. No.

Q. Well, state why it is not right.

A. Well, it is always safer if you have got a little way on the ship when you are laying like that in a traveled lane. You always have more command of the ship, and you can keep her headed to the tide, and so on.

Q. You would say that it was for the safety purposes of the "Denali"——

A. (Interposing) Well, you asked me, and I am telling you.

Q. (Continuing) That the "Denali" kept going ahead on the way from West Point to Apple Cove Light; is that right?

A. You asked me for any other reason and I gave you it.

Mr. Long: I object to the argumentative question of counsel.

The Court: The Court is going to overrule the objection to this particular question, but it is really a collateral matter. I might say that there is something about the conduct of this present examination that indicates that either the counsel or the witness, or both, may be sparring for time. I would wish you would proceed with your examination.

(Testimony of William Cleasby.)

Mr. Ryan: I am trying my best to cover this in as short a time as possible.

The Court: The examination is proceeding too slowly. Please expedite your examination. [2101]

Mr. Ryan: I will expedite it as much as I can. Will you answer that question?

A. What is your question?

Mr. Ryan: Read the question.

(Question read as follows:

“You would say now that it was for the safety purposes of the ‘Denali’ that the ‘Denali’ kept going ahead on the way from West Point to Apple Cove Light; is that right?”)

A. I said, “No”.

The Court: Ask him another question.

Q. (By Mr. Ryan) What was the reason why the “Denali” kept going ahead from West Point to Apple Cove Light on the way to Alaska while she was loading dynamite from a powder barge or the second powder barge?

A. Well, I don’t know just what time they finished taking their bearings. I was working on the dynamite, and I know there was a little way on the ship to keep the ship so as to be able to swing the ship so they could take bearings, but just how far it was in there I don’t know, and the man on the boat told me that he was going to Kingston, and I said, “Well, if we have you off of Kingston by the time that we finish discharging will that be fine?” And he said, “Yes.”

(Testimony of William Cleasby.)

Q. Did he say—well, I have already asked that. So you swung ship while you were loading dynamite from the second powder boat, isn't that right?

A. I cannot say that. I was not up there taking no bearings. I was working on the dynamite. You will have to ask them about that.

Q. Well, the second powder boat came alongside, didn't she? [2102]

A. Yes, sir.

Q. And she was secured with lines?

A. Yes, sir.

Q. And you had this conversation with the master of the second powder boat that you have described?

A. Yes, sir.

Q. And the first powder boat left shortly after the second powder boat secured alongside, didn't she?

A. I think she left before the other one secured, if I remember right.

Q. I see. Then you loaded dynamite from the second powder boat?

A. Yes, sir.

Q. And then you began to swing ship, is that right?

A. We might have been just about finished by then. I don't know. You will have to check by the time. I believe there is no doubt about it. We were still—we were taking powder while they were swinging, but I cannot say whether the boat was there

(Testimony of William Cleasby.)

when we finished taking bearings. I cannot say for sure because I don't know what time they finished with the bearings. I had nothing to do with that.

Q. You had nothing to do with the swinging of the ship or the navigation?

A. No. I knew they were up there getting the bearings.

Q. Well, you were down working, weren't you?

A. Yes, sir.

Q. All you know is that they were up on the bridge, isn't that so?

A. Yes, sir, they were up there.

Q. You don't know what they were doing on the bridge, do you? [2103]

A. Well, you have a general idea after you have been to sea a long while.

Q. But you didn't—you were down working around in the shelter deck and around there—around the No. 2 booms at the time, isn't that so?

A. I was.

Q. You weren't up in the pilot house or at the bridge at any time, were you, in connection with that?

A. No, I cannot say for sure that I was.

Q. Now, you said something about going on watch on sailing. Do you mean that,—about going on watch on sailing from Seattle.

A. On watch, yes.

Q. You do not mean that you were standing watch on the bridge?

(Testimony of William Cleasby.)

A. No.

Q. You had nothing to do with navigation?

A. No.

Q. You didn't stand a regular watch as a watch officer on that trip, did you?

A. No. The first mate is not required to stand a watch on the Alaska run.

Q. And that has been the practice on ships of the Alaska Steamship Company for a great many years, has it?

A. As long as I have had any knowledge, yes.

Q. How long have you been working for them?

A. Off and on for twenty-five years.

Q. Now, in Seattle, on May 15th, when you were on duty—during what hours were you on duty on that date?

A. May 15th? [2104]

Q. Yes.

The Court: If you can recall you may say so; if not, say so.

A. I don't recall exactly. I generally go off at four o'clock if everything is all right.

Q. (By Mr. Ryan) Four o'clock in the afternoon?

A. Yes, sir.

Q. Your job is to load the cargo in the day time, isn't that right?

A. No.

Q. At that time—

A. (Interposing) In Seattle they have stevedore bosses for that.

(Testimony of William Cleasby.)

Q. Well, you watch them doing that. I mean, that is your job?

A. Oh, yes.

Q. In connection with loading cargo?

A. Yes, sir.

Q. Isn't that right?

A. Yes, sir.

Q. And the discipline of the crew and things like that in the harbor, is that right?

A. Yes, sir.

Q. Now, when were you asleep? When did you go to sleep on the night of May 15th, do you remember, or on the whole day of May 15th, if you remember?

A. At eight or nine o'clock.

Q. At night?

A. Yes, sir.

Q. When did you get up the next morning?

[2105]

A. About four o'clock.

Q. Then what did you do? That is May 16th, now?

A. Yes, sir.

Q. Then what did you do from then on?

A. Saw that everything was shipshape for sailing and that the crew was all aboard.

Q. You went on duty then when you got up, is that right?

A. Yes, sir.

(Testimony of William Cleasby.)

Q. And you stayed on duty in connection with the loading of cargo and the discipline of the crew until what time on the 16th?

A. That is hard to say. I would be on all day.

Q. From 8:00 A.M. to 4:00 P.M., is that right?

A. Yes, sir.

Q. On May 16th?

A. Yes, sir.

Q. You were on duty?

A. Those are my hours of duty.

Q. Well, those are the hours that you were on duty on that occasion, is that right, on May 16th?

A. I may happen to be on a little bit longer than that because there is always a little something to do when you are leaving, aboard.

Q. 8:00 A.M. to what time in the afternoon were you on duty then?

A. I don't remember. I don't remember just what time my work was finished.

Q. Well, would you say it was 5:00 o'clock or 6:00 o'clock?

A. Well, I would knock off at 5:00 o'clock for supper.

Q. Yes. [2106]

A. And any other duties that would be required—

Q. (Interposing) Did you perform any other duties that evening, May 16, 1935?

A. I cannot say for sure.

Q. All right. Now, May 17, 1935. On the night of May 16th you went to bed, didn't you?

(Testimony of William Cleasby.)

A. Yes, sir.

Q. About what time?

A. 8:00 or 9:00 o'clock.

Q. And then you got up the next morning on May 17th, 1935, at what time?

A. At 7:20.

Q. And went on duty at what time?

A. I went up on the bridge shortly after 8:00 o'clock.

The Court: What is the purpose of all this, counsel?

Mr. Ryan: We have charged in our specifications and in our pleadings improper division of watches of the mates—the three mates on this ship. They were not divided into proper watches.

The Court: Very well. Proceed.

Mr. Ryan: And we have submitted authorities on the matter to Your Honor in the brief.

Q. (By Mr. Ryan) Then from 8:00 A.M. until noon—from 8:00 A.M. on, on May 17th, what did you do? Where were you on duty—were you on duty, and if so, where?

A. I stood watch on the bridge, I think.

Q. I see. From 8:00 A.M., until noon, is that right?

A. I believe so.

Q. You relieved the master? [2107]

A. Yes, sir.

Q. And the second mate stayed with you?

A. No, I cannot say that the second mate was up there that morning.

(Testimony of William Cleasby.)

Q. So, from 8:00 A.M. to noon on May 17th you were up there, to study navigation and to learn, and the master and second mate walked off the bridge and left you alone for four hours, is that right?

A. I told you a while ago that the master was always around during his watch.

Q. Well, how about the second officer? Was he around during his watch or not?

A. That was not his watch. He was off the watch then, unless he stayed up there of his own accord.

Q. Well, on that day was he on watch or not from 8:00 A.M. until noon?

A. No.

Q. Was he actually on the bridge or in the chart room performing some duties in connection with navigation, if you know?

A. I cannot say that either way for sure, but I know that he was not on watch. If he was up there at all it was of his own accord. I cannot say whether he was or not. You will have to ask him.

Q. I see. And then at noon on May 17th what happened, or what did you—did you perform any other duties, and, if so, what?

A. Well, the pilot took over the watch at noon.

Q. Then what did you do? What duty did you take up?

A. I don't know what I did then. I might have went to bed. [2108]

Q. Well, you just got up at 7:20 in the morning, didn't you?

(Testimony of William Cleasby.)

A. Well, a nap in the afternoon comes in pretty good.

Q. I see. So you didn't perform any duties on the afternoon of May 17th, is that right?

A. No. Not that I can positively remember, no. I am always on duty, as a matter of fact.

Q. Now, on the evening of May 17th when did you go on duty again, if you did?

A. Well, I am always called at 7:20 in the morning.

Q. No. On the evening of May 17th.

A. Oh, in the evening?

Q. Yes. Did you perform any duties then?

A. Well, I went up and relieved on the bridge again—worked on the bridge.

Q. From 6:00 P.M. until dark?

A. I believe so. I believe that that was the time.

Q. And you relieved the master for dinner?

A. No.

Q. Whom did you relieve for dinner?

A. The master comes up after the eats.

Q. Who did you relieve at 6:00 P.M. on May 17th?

A. Well, that would be the pilot.

Q. Well, I thought the pilot had the midnight to 6:00 o'clock watch, and the twelve to 6:00 watch?

A. Well, that would be at 6:00 o'clock, wouldn't it, at night?

Q. I know, from 6:00 o'clock—when did you go on duty again on the afternoon or evening of May 17th?

(Testimony of William Cleasby.)

A. Well, I told you that I went up to relieve the captain.

Q. Oh, you relieved the captain? [2109]

A. Yes, sir.

Q. For how long did you relieve the captain on the evening of May 17th?

A. I think I stayed there until it was dark.

Q. And at what time did you relieve him—beginning at what time?

A. Well, as soon as he relieved the pilot and got his watch squared up.

Q. That would be at 6:00 o'clock or 6:30?

A. 6:00 o'clock or a little bit before.

Q. Then you stayed on until dark?

A. Then I stayed on until dark, yes, sir.

Q. Then who relieved you?

A. Well, the captain assumed command of it.

Q. Then during the six to eight watch the second mate was with you?

A. Yes, sir. The 6:00 to midnight?

Q. Yes. He was on there with you all the time on that watch?

A. Yes, sir.

Q. He was there all the time with you?

A. Yes, sir.

Q. There were only three mates on the "Denali"?

A. Yes, sir.

Q. And she was over a thousand gross tons?

A. Yes, sir.

(Testimony of William Cleasby.)

Q. And a voyage from Seattle up to Metakatla is more than four hundred miles, isn't it?

A. It should be, yes, sir.

Q. I see. Then the next day, May 18th, did you go up and [2110] relieve anybody for coffee, or go up to study navigation any more, or do anything of that sort?

A. No doubt I went up there when the second mate got off in the morning. No doubt I went up there when the second mate got off at 8:00 o'clock, to help the captain.

Q. Do you remember whether you did or not?

A. I cannot say for sure.

Q. You were not required to do it, were you? It would not be a part of your duty?

A. No, I was not required to do that.

Q. And you don't remember that you did it on May 18th?

A. No, I cannot say for sure on May 18th.

Q. Did you go up on the bridge at any time on May 18th?

A. Oh, yes.

Q. To relieve anybody for coffee, or anything like that?

A. Oh, yes. You always relieve for coffee.

Q. When did you relieve for coffee?

The Court: That question may be propounded in the morning.

Mr. Ryan: I beg your pardon. I was trying to finish.

(Testimony of William Cleasby.)

The Court: The court is adjourned until tomorrow at ten o'clock in the forenoon.

(Whereupon an adjournment was taken at 4:30 o'clock P.M., November 4, 1937, at 10:00 o'clock A.M., November 5, 1937.) [2111]

November 5, 1937,
10:05 o'clock A.M.

Court convened pursuant to adjournment;
All parties present.

The Court: Are there any other ex parte matters or matters upon agreement to come before the Court? If not, you may proceed with the case on trial. Mr. Cleasby, resume the stand.

WILLIAM CLEASBY,
resumed the stand for further examination.

Further Cross Examination.

By Mr. Ryan:

Q. You testified yesterday that when you and the captain and the third mate were rowing from the "Denali" to the "Cyane" the current was shoving you over against the island. What island did you refer to?

A. More towards the reef of the island.

Q. You testified yesterday that it was shoving you towards the island. Which island did you refer to at the time?

A. Zayas Island.

(Testimony of William Cleasby.)

Q. Zayas Island?

A. Yes, sir.

Q. All right. Will you come down to this chart?

(Witness goes down to chart)

Q. Indicate on this chart, Petitioner's Exhibit 33, the location of the Coast Guard Cutter "Cyane" at the time that you were rowing from the "Denali" to the "Cyane".

A. You mean at first or last? First we could not row [2112] towards her at all.

Q. All right. Will you locate the "Cyane". She was there all the time, wasn't she?

A. She was on the outside of the wreck; on the eastern side of the wreck.

Q. And that you say was at 10:00 A.M. on May 19, 1935, is that right?

A. I said approximately.

Q. Yes. Well, mark there where you say is the location of the "Cyane".

A. Right here (drawing line on Petitioner's Exhibit 33).

Mr. Ryan: The witness drew a short heavy line, and I will put a line there with an arrow to it. At the end of the arrow is the letter "W" with a circle around it (draws on Petitioner's Exhibit 33).

Q. (By Mr. Ryan) Is that right?

A. Approximately, yes.

Q. The "W" points to where you say the "Cyane" was?

A. Yes, sir.

(Testimony of William Cleasby.)

Mr. Ryan: I will put the word "Cyane" underneath the "W" (writes on Petitioner's Exhibit 33).

Q. (By Mr. Ryan) Now, are you sure that that is where the "Cyane" was—

A. (Interposing) Yes, sir, approximately.

Q. (Continuing) —at about 10:00 A.M. on May 19, 1935?

A. I said approximately, yes.

Q. Now, the "Denali" at that time was where?

A. On this reef here (indicating on Petitioner's Exhibit 33).

Q. Indicating the circle or the point that says "Drys [2113] 12 feet". Is that right?

A. Yes, sir.

Q. That reef?

A. Yes, sir.

Q. Now, what direction is the "Cyane" from that reef according to your story?

A. Approximately east.

Q. You think that the "Cyane" is east as shown on that chart?

A. Yes, sir.

Q. Will you lay it down? Do you know how to use a parallel rulers?

A. I ought to.

Q. Then tell us what direction that is.

A. I said that she is laying approximately east of the wreck.

Q. Lay it down. Can you tell us from that chart what direction it is?

(Testimony of William Cleasby.)

A. Well, yes. It is east.

Q. Well, here is a pair of parallel rulers and here is a divider and use those on the chart.

A. I don't need any dividers (marks on chart).

Q. Do you want to lay it down on the table?

A. Yes, if you want it exact.

Q. Yes, I want it exact. Lay it down on the table. I will take this chart off the easel and lay it down on the table. Now I ask you to lay it down carefully on this flat table. On this tell me the direction of the "Cyane" from the "Denali" at the time that you were rowing from the "Denali" to the "Cyane". [2114]

A. (Using parallel rulers on chart) East by South by Half South.

Q. East by South $\frac{1}{2}$ South?

A. Yes, sir.

Q. Is that true or magnetic?

A. Well, that is magnetic.

Q. That is magnetic?

A. Yes, sir.

Q. What is it true?

A. 150.

Q. 150?

A. Yes, sir.

Q. What is that in points of the compass?

A. What is that in points of the compass?

Q. Yes.

A. What do you mean? In true points of the compass, is that what you mean?

(Testimony of William Cleasby.)

Q. Don't you know what a true direction is as distinguished from a magnetic direction?

A. Well, you asked me——

Q. (Interposing) Give me the true direction of the "Cyane" from the "Denali" when you were rowing from the——

A. (Interposing) I did.

Q. (Continuing) ——when you were rowing from the "Denali" to the "Cyane".

A. I did. 150 degrees true.

Q. What is it in points?

A. I cannot give you that offhand.

Q. Well, can you look at the compass rows and tell us? You [2115] know the box of a compass, don't you?

A. Yes, sir.

Q. What is 150 degrees true in points?

A. Well, this is plotted in magnetic and points and true degrees.

Q. You don't know what 150 degrees is in points?

A. You can catch it right here.

Q. That is all right. But you don't know, do you?

(Witness does not answer)

Q. Take the stand again, Mr. Cleasby.

(Witness resumes stand)

Q. Now, you were running against this current, were you?

A. Yes, sir. We were trying to.

Q. And it was the flood tide?

(Testimony of William Cleasby.)

A. Flood tide, yes, sir.

Q. And you were being set to the—the current at that time was setting you to the westward, wasn't it?

A. No.

Q. Well, if you were rowing East by South the current that you were running against was setting you to the westward, wasn't it?

A. No. It was setting slightly—not the westward. It was setting us in a general northerly direction, and we were trying to get south so as to get around the stern of the "Denali".

Q. Oh, I see.

A. And we were unable to row against it.

Q. In other words, the current that you were rowing against was one that was coming from the south, is that it?

A. Well, at that end of the wreck and the island, yes. [2116] The ship would deflect it some and that was the general direction of the current right in the channel itself.

Q. I see. In other words, the current that you encountered in rowing from the "Denali" to the "Cyane" is the very current which is shown by the arrows on this Chart 2828, isn't it?

(Witness does not answer)

Q. Come and look at the chart, and I will call your attention to the force and direction of the current as shown by United States Government Chart——

(Testimony of William Cleasby.)

A. (Looking at Petitioner's Exhibit 33) Yes.

Q. Yes.

A. Yes. You are about here in the channel (indicating on Petitioner's Exhibit 33). We are not over here where the arrows are; we are over here (indicating on Petitioner's Exhibit 33).

Mr. Ryan: Show that so that it will get into the record.

The Witness: We are over here, in here; we are not over here at all (indicating on Petitioner's Exhibit 33).

Q. (By Mr. Ryan) Yes, but the direction of that current was the direction which is indicated by these arrows over here in the middle of Caamano Passage, isn't that so?

A. In mid-channel of Caamano Passage.

Q. In other words, the current at that time was setting to the northward, isn't that right?

A. Inside of these rocks, yes. [2117]

Q. Yes.

A. In here (indicating on Petitioner's Exhibit 33).

The Court: The time was about seven hours after the stranding, was it?

Mr. Long: That is right.

Mr. Ryan: That is right.

The Court: Isn't that so?

The Witness: Yes, approximately seven hours after the stranding.

Mr. Ryan: All right. Would you take the stand again?

(Testimony of William Cleasby.)

(Witness resumes stand)

Q. (By Mr. Ryan) Now, when you were rowing from the "Denali" to the "Cyane", you and the captain and the third officer—you say that you picked up a couple of men from Obert's boat?

A. Yes, from Captain Obert's boat.

Q. Do you know the names of those men?

A. No, I don't know who they were. I don't remember who they were, I should say.

Q. How many men were there?

A. Why, I think that he gave us three or four.

Q. Didn't you in fact get two men from Obert's boat?

A. It might have been two men.

Q. Well, I would like your best recollection on it.

A. Well, that is my best recollection. I gave it to you first. I said about three or four men.

Q. How many men were there in Obert's boat, from Zayas Island to the "Cyane"?

A. Well, it is hard to say, but it was the heaviest manned [2118] boat, as the passengers were in that boat.

Q. It was the biggest boat that you had, wasn't it?

A. No, not the biggest; the same size as the rest of them.

Q. What was the capacity of the boat for passengers and crew, the boat in which you and the captain and the third mate were rowing?

(Testimony of William Cleasby.)

A. Thirty-five persons, if I remember right.

Q. And it is a pretty hard boat to row for three men in any kind of a current, isn't it?

A. Well, I would not say that.

Q. At any rate you say that this boat went out. How many boats went from the "Denali" to the beach before the "Cyane" ever came around there?

A. I think two of them.

Q. Two went over to the beach?

A. I am not saying for sure. I don't remember exactly.

Q. And then you lowered one lifeboat for you and the captain and the third mate to use in an emergency when you wanted to go, is that right?

A. No. They were all lowered at the same time.

Q. Oh, I see. You lowered three boats, is that right?

A. We lowered all of them.

Q. Yes. Well, you had a boat standing by for you and the captain and the third mate, didn't you?

A. No. The "Cyane" returned that boat to us because it was getting—because he said then that he didn't care to stand by any longer.

Q. Wait a minute, now. I am talking about now before the "Cyane" ever got there. I am talking about the early morning of May 19th. They hadn't got there yet. The [2119] situation was that you sent two boats ashore with the pilot and a lot of men, is that right—to Zayas Island?

(Testimony of William Cleasby.)

A. Yes, I think there were two boats that went there. I am not saying that for sure, though.

Q. And there was a boat available for you and the captain and the third mate, was there not?

A. At that time, yes.

Q. And that boat was on your port side amidships, wasn't it—down in the water?

A. Yes. That is the side on which we had our ladder out.

Q. And then when the "Cyane" came out there she circled around and started to come up on your port side, didn't she?

A. Yes, sir.

Q. And you had a man take the lines on this lifeboat on your port side and run the boat up forward on the port bow, didn't you?

A. You are getting mixed up in it.

Q. So that the "Cyane" would not crush the boat when it came alongside. Isn't that so?

A. No—yes, I think that is right.

Q. Well, there were only three men on the boat at that time, you and the captain and the third mate?

A. Oh, no. There was more than that then.

Q. They had gone ashore, hadn't they?

A. Not all of them. There were several men that stayed there.

Q. I see.

A. The chief engineer, the first assistant and the wireless [2120] operator.

(Testimony of William Cleasby.)

Q. I see. Now, when you and the captain and the third mate got into the lifeboat from the "Denali" you got into the lifeboat down the Jacobs ladder on the port bow, didn't you?

A. No, sir.

Q. Well, from where did you get into the lifeboat?

A. Right amidships.

Q. On the port side?

A. Yes, sir.

Q. And then you started out?

A. Yes, sir.

Q. Were you rowing?

A. I was helping, yes.

Q. And then the boat started out towards the "Cyane", is that right?

A. No. We tried to. We could not get around the wreck.

Mr. Ryan: That is all, Your Honor.

Redirect Examination.

By Mr. Bogle:

Q. Mr. Cleasby, was the "Cyane" anchored, or was she under way?

A. No. She kept under way. She could not lay to without any way on her at the different times.

Q. Was she in any one stationary spot, or was she shifting around?

A. She was shifting around.

Q. Did you at any time on this morning, and particularly [2121] at the time you left—you finally

(Testimony of William Cleasby.)

left the "Denali"—did you when you finally left the "Denali" actually look at your watch to get the exact time?

A. I probably did, but I don't remember it.

Q. Do you know now the exact time that you left the "Denali"?

A. It says eight o'clock.

Q. No, I say do you know what time you left the "Denali"?

A. No, I don't.

The Court: What was that answer?

(Answer read as follows: "It says eight o'clock).)

The Court: What says eight o'clock?

The Witness: I think that is what counsel told me.

Mr. Ryan: No. I beg your pardon, I did not. I never made any such statement.

The Court: The reason why the Court asked to have the answer repeated was because I understood the witness to say that on his previous testimony that he left the wreck about ten o'clock in the morning.

Mr. Bogle: That is right.

The Witness: That is what I figured that we did.

Mr. Bogle: Something was said about an earlier time, and I was trying to get his recollection on that.

The Court: Very well.

Q. (By Mr. Bogle) Mr. Cleasby, did you on this morning note the direction of the flood tide off the south end of the island—of Zayas Island?

(Testimony of William Cleasby.)

A. Well, I noted it to the extent that we could not row against it to get around the stern of the "Denali". [2122]

Q. You testified on cross examination that the tide was running—I think you said south in the channel.

Mr. Ryan: Now, please, that is not the summary of this witness' testimony, and I ask that leading questions not be put to the witness.

Mr. Bogle: That is not a leading question.

Q. (By Mr. Bogle) At 10:00 A.M., Mr. Cleasby, what direction was the tide running in Caamano Passage in the vicinity of the wreck?

A. Well, it was running to the northerly.

Q. To the northerly?

A. Yes. That is, in Caamano Passage?

Q. Yes, in Caamano Passage, that is what I mean.

A. Yes, sir.

Q. Do you know how the tide was running south of Zayas Island, outside of the passage?

A. You mean outside of the passage?

Q. Yes. Below the island.

A. Not at that time. I know since.

Mr. Ryan: I ask that counsel for petitioner not point with his finger at the chart and ask questions of the witness in that way, and I will ask that counsel be requested to stand back a little so that he won't inadvertently do that.

(Testimony of William Cleasby.)

The Court: That is denied. Counsel may in this instance call his attention to the exact location on the chart that he wishes to call his attention to.

Mr. Ryan: But he put his finger on a place on the chart and then took it away and then asked the witness a question, and in doing it that way we have no [2123] way of putting it in the record where counsel put his finger on the chart.

The Court: Have the place indicated.

Mr. Bogle: I shall get to that, Your Honor. I was coming to that.

The Court: Very well.

Q. (By Mr. Bogle) Now, the place on the chart where there are two figures in circles, one five and one seven, do you see those?

A. Yes, sir.

Q. South of Zayas Island?

A. Yes, sir.

Q. In what direction was the flood running in that vicinity?

A. In that vicinity she was running to the eastward.

Q. She was running to the eastward?

A. In that vicinity. That is way to the south—that is at the south end of the island?

Q. Yes, that is right.

The Court: The witness may resume the witness stand now.

Mr. Ryan: I didn't get those numbers that counsel was referring to.

(Testimony of William Cleasby.)

The Reporter: One five and one seven.

Q. (By Mr. Bogle) Did you notice the direction of the tide immediately after the stranding?

A. Immediately after the stranding—no, I could not tell you the exact direction because she was just running alongside of the ship, and to tell exactly what angle she was hitting on, it is pretty hard to say. You can tell it before she stranded, by the action on the ship [2124] more than afterwards in a case like that when the angle would not be exactly opposite.

Q. Well, if you don't know, Mr. Cleasby, I don't want to get any speculation from you. Mr. Cleasby, I didn't get clear yesterday just what watches the mates stood on this ship.

Mr. Summers: This is not proper redirect and we object to it.

Mr. Bogle: They went into it in great detail yesterday. In reading the record I cannot get quite clear yet just what watches they stood.

Mr. Ryan: The question of the watches of this witness was gone into on direct examination by Mr. Bogle at the very start. Then my cross examination was directed to the testimony that was brought out at that time by Mr. Bogle. That matter was covered on direct and cross, my cross referring to counsel's direct examination, and this is not proper redirect examination.

Mr. Bogle: I didn't ask him what watches the other mates stood. That was brought out on cross.

(Testimony of William Cleasby.)

I merely asked him about his own watch on my direct examination.

Mr. Ryan: Of course, he showed him every watch all the way back through the log books. He showed all the watches from the log books for the whole voyage, and the man testified—he said, “I stood this, and this other man stood that”, and that sort of thing. That was gone into on direct examination.

Mr. Bogle: The question was can you tell from the [2125] log book what watches you stood. That is all that I asked him.

The Court: Well, he may answer that. [2126]

Q. (By Mr. Bogle) What watches did the second and third mates stand?

Mr. Ryan: The same objection.

Q. What were their set watches?

Mr. Ryan: The same objection, on the ground that it is not proper redirect examination.

The Court: Overruled.

The Witness: Starting the day at midnight, the third officer would stand from midnight until 6:00 in the morning, relieved at 6:00 by the second mate, who stood until 8:00 o'clock. At 4:00 o'clock in the afternoon the third officer came on again and stood from 4:00 until 6:00, completing his eight hours in that 24. At 6:00 o'clock the second officer came on and stood until midnight, and that would complete his eight hours in the 24.

Q. On the 16th, 17th and 18th what watches or portions of watches did you stand?

(Testimony of William Cleasby.)

Mr. Ryan: If the Court please, that was gone into very fully on direct examination.

The Court: Unless there is some purpose, or some particular phase of it which is desired to be cleared up, I think so.

Mr. Bogle: I do want to clear up one phase of it. They went into it piecemeal. If it is necessary to recall him I would like to recall him to ask the one question, because I think it is something that is important.

The Court: In view of the objection you may recall him, and let the record show that he is recalled for the purpose of asking one question. [2127]

Q. (By Mr. Bogle) Will you look at the log book and tell me, if you can, what watches or portions of watches you stood on the "Denali" on May 16th, 17th and 18th, 1935.

Mr. Summers: That is objected to on the ground that he was examined on that on direct, and this tends to impeach the witness.

The Court: Objection overruled. The witness is recalled for this purpose.

Mr. Summers: I object not on the ground that it is not redirect, but on the ground that it is impeaching the witness.

Mr. Ryan: I want to add the further objection that the witness is not being asked if he knows what watches he stood, or his best recollection, he is being shown a document and, in effect, asked to read from it.

(Testimony of William Cleasby.)

The Court: Read the question. (Question read as follows:

“Q. Will you look at the log book and tell me, if you can, what watches or portions of watches you stood on the ‘Denali’ on May 16th, 17th and 18th, 1935.”)

Mr. Bogle: I will ask a preliminary question.

Q. (By Mr. Bogle) Mr. Cleasby, do you remember, without reference to the log book what watches you stood, if any, or portions of watches, on the 16th, 17th or 18th of May?

Mr. Ryan: We object to that.

The Court: The objection is overruled.

The Witness: On the 16th I didn't stand any watch. On the 17th I stood from 8:00 a.m. until noon, and I stood a watch that evening for about four hours, around [2128] 6:00 o'clock until it became dark, when I was relieved by the captain. I also stood on the 18th from 8:00 to 12:00 a.m. I think that was the full extent of my watches.

Q. Do you recollect whether you relieved the pilot for short intervals?

A. I used to do that regularly.

Mr. Summers: I object to that as leading, and also as going beyond the Court's permission.

Mr. Ryan: If the Court please, as to that last answer I would like——

Mr. Bogle: (Interposing) I will withdraw it.

Mr. Ryan: The portion about 8:00 a.m. to noon on May 18th, I would like to move to strike it out

(Testimony of William Cleasby.)

on the ground that it is now fully disclosed that the purpose of the question was to impeach this witness. He testified yesterday that he had no recollection whatever about that 8:00 a.m. to noon watch on May 18th, and that he couldn't say that he was on watch there at any time.

The Court: The objection and motion are overruled and denied.

Mr. Bogle: That is all, Your Honor.

The Court: Mr. Ryan, you may recross and further cross on this new matter that has been developed.

Mr. Ryan: No questions.

The Court: You may be excused from the stand. Call the next witness.

Mr. Bogle: Does Your Honor desire that Mr. Cleasby remain in court? [2129]

The Court: If there is no objection Mr. Cleasby may be excused from further appearing as a witness at this trial.

Mr. Ryan: No objection.

(Witness excused.)

ERWIN P. LARSON,

called as a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Long:

Q. State your full name, please.

A. Erwin P. Larson.

Q. Where do you live, Mr. Larson?

A. In Seattle.

Q. Are you a married man?

A. Yes, sir.

Q. What is your business?

A. Well, I am a seafaring man.

Q. Where were you born, Mr. Larson?

A. Sweden.

Q. Are you an American citizen?

A. Yes, sir.

Q. What license, if any, do you hold issued by the United States Steamboat Inspection Service, Department of Commerce?

A. Second mate ocean, any tonnage.

Q. Is that referred to as second mate's, unlimited?

A. Yes, sir. [2130]

Q. Have you that license with you?

A. I have. (Witness produces license.)

Mr. Ryan: No objection to reading that into the record the same as before.

Mr. Long: The same as we have done with the previous licenses.

(Testimony of Erwin P. Larson.)

The Court: The reporter will incorporate that into the record at this place.

(License copied into the record as follows:

(First page)

| | |
|---------------|------------------|
| “C. Form 871 | File No. L 16231 |
| Serial Number | Issue Number |
| 55967 | 1, 1 |

United States Department of Commerce
Steamboat Inspection Service

License to Mate of Ocean or Coastwise Steam
and Motor Vessels

This is to certify that Erwin P. Larson having given satisfactory evidence to the undersigned United States Local Inspectors, Steamboat Inspection Service, for the district of Seattle, Wash., that he is a skilful navigator and can be intrusted to perform the duties of Second Mate on Steam and Motor Vessels of any gross tons, upon the waters of is hereby licensed to act as such Second Mate on Steam and Motor Vessels for the term of five years from this date. Given under our hands this 11th day of January, 1934.

WILLIAM M. CAMPBELL

Acting U. S. Local Inspector
of Boilers.

DANIEL B. HUTCHINGS

Acting U. S. Local Inspector of Hulls
Form 1108 [2131]

(Testimony of Erwin P. Larson.)

(Second page)

Signature of holder of license Erwin P.

Larson

Date of birth March 8, 1898

Place of birth Sweden

Naturalized

Date of Naturalization Feb. 13, 1932

Place of Naturalization Seattle, Wash

By what Court District

Naturalization Certificate No.....

Present address 2831 W. 73rd, Seattle

Passed visual examination Yes, Nov. 13,
1933

Visual examination on file in the office of
Seattle, Wash.

DANIEL B. HUTCHINGS

WILLIAM M. CAMPBELL

Acting U. S. Local Inspectors issuing this
license.)

Passed Examination for Color Blindness
at Seattle, Washington, Nov. 13, 1933

DANIEL B. HUTCHINGS

WILLIAM M. CAMPBELL

Acting Local Inspectors."

Q. (By Mr. Long) How many years have you
been going to sea, Mr. Larson?

A. Since 1913.

Q. Just tell us generally what your experience
has been at sea.

(Testimony of Erwin P. Larson.)

A. Steam and sail. I spent about seven years in sailing ships, and the rest in steam.

Q. Did you sail in Swedish ships?

A. Yes. [2132]

Q. And American ships?

A. Norwegian, English and American.

Q. When did you come to this country?

A. I was in this country the first time in 1917, but I left again. I was sailing at the time and I never settled down.

Q. How many years have you been sailing to Alaska?

A. Since 1922, off and on.

Q. How old were you when you first went to sea?

A. 15 years old.

Q. What vessels of the Alaska Steamship Company have you served on as second officer?

A. On the S.S. 'Oduna', as a second mate, and the S.S. "Oduna" as a third mate; and on the "Cordova" as second mate for two seasons, and the S.S. "Denali".

The Court: In what capacity on the "Denali"?

The Witness: As second mate.

Q. (By Mr. Long) You were assigned to the steamer "Denali" in May of 1935?

A. I was.

Q. As what officer?

A. As second mate.

Q. Who assigned you to that ship?

A. Mr. Tracy.

(Testimony of Erwin P. Larson.)

Q. Where were you employed during the winter of 1934 and the spring of 1935?

A. I was employed in the West Seattle yard, except for a short time that I was in the hospital that winter.

Q. Were you present at the West Seattle yard when the steamer "Denali" underwent her annual inspection? [2133]

A. I was.

Q. About when was that, do you remember?

A. Well, I have got the time cards here for the time.

(Witness produces documents.)

Q. Just tell us about what date that was.

A. I was there for seven days, getting her ready for inspection.

Q. In what month was that in 1935?

A. In January, 1935, and we had the inspection the 29th and the 31st of January, according to the time cards.

Q. Were you present in the courtroom when Capt. Kelly, United States Steamboat Inspector, testified?

A. I was.

Q. Did you see him on board the "Denali" making the inspection?

A. I did.

Q. Did you do anything to assist him in that inspection, in connection with this ship?

(Testimony of Erwin P. Larson.)

A. Well, I was appointed by the captain there at the time to assist Capt. Kelly with the inspection.

Q. What did you do with reference to any assistance you personally rendered Capt. Kelly?

A. Well, I did everything that he wanted me to do; test the fire extinguishers, the hoses, all the life-boat equipment, and different things, according to what the Inspectors wanted.

Q. Did you do anything in connection with the pilot house equipment, with Capt. Kelly?

A. Well, I was in the pilot house at the time Capt. Kelly asked for the deviation book, and I got the deviation [2134] book for him out of the chart room and handed it to him.

Q. That was the deviation book for what years?

A. It went back two or three years, the deviation book, as it always does. They always keep the deviation book on the ship for years. It never leaves the ship.

Q. Did Capt. Kelly return those things to you?

A. He did after he was through, and I put them back in the drawer in the chart room.

Q. Did you stay in the pilot house while he made his inspection there?

A. No; I went back in the chart room.

Q. What day did you join the "Denali", and where, in 1935?

A. I joined her as second mate on May 13, 1935, but I was there the day before, sent over from the yard to get all the equipment on board.

(Testimony of Erwin P. Larson.)

Q. You say Mr. Tracy appointed you?

A. Yes.

Q. About how many days before May 13th were you informed of your appointment as second mate of the "Denali"?

A. Three or four days.

Q. What day did you join the "Denali", what time of day did you join the ship on May 13th?

A. Around 6:00 o'clock in the morning.

Q. Just tell us in your own words what you did when you went aboard that day; what were your immediate duties?

A. Well, after I got on board I changed clothes and went up in the pilot house, and the third mate was there, and we commenced to check the steering gear, the whistle, the telegraph, the speaking tube, and things.

Q. Just tell us how you tested the telegraph?

[2135]

A. Why, you blow down in the speaking tube to the engine room down below and tell them you are going to test the telegraph. The engineer knows what is going on, and he will answer the same thing as you put on the telegraph. If you put it full ahead he will come back with full ahead, and if you put her full astern he will come back with full astern, and then stop, and slow ahead, whatever you want to do.

Q. In other words, you would move the handle of the telegraph and he would answer?

(Testimony of Erwin P. Larson.)

A. Absolutely.

Q. In what condition did you find the telegraph?

A. Fine working order.

Q. You said you tested the steering gear?

A. Yes.

Q. Tell us what that test was, and who made it?

A. Me and third mate and the mate. One man would put the wheel hard over in the pilot house, and one man in back aft to see that the rudder is hard over, the quadrant.

Q. The quadrant, you say?

A. Yes.

The Court: Not too fast, Mr. Larson, and speak as distinctly as you can.

The Witness: All right.

Q. (By Mr. Long) Take your time. Who was back aft in connection with the inspection of the steering gear, do you remember?

A. Well, the mate was back aft there, and the third mate and me was in the pilot house, and I went half way back on the boat deck to talk to the mate. [2136]

Q. In what condition did you find the steering gear to be?

A. Fine working order.

Q. Had it been greased and checked over?

A. Oh, yes.

Q. Was the whistle tested?

A. Yes, sir.

Q. In what condition did you find the whistle?

(Testimony of Erwin P. Larson.)

A. Fine.

Q. And the speaking tubes?

A. The same thing.

Q. Did you make any examination of any further equipment that morning at West Seattle, if you remember?

A. No; I didn't test anything; except the captain told me to get the pelorus out of the pilot house and put it on top of the bridge, on the stand. That is all.

Q. Where is the stand located with reference to the standard compass?

A. Standing alongside of it, approximately three to four feet.

Q. What is it made of, do you know; what material?

A. Brass.

Q. What did you do pursuant to those orders from the captain?

A. I took the pelorus out of the pilot house and took it up on the top of the bridge.

Q. Where did you put it?

A. In the stand, in the gimbals.

Q. Did you stay up on the top of the bridge where the standard compass was when Capt. Healy made any use of the pelorus? [2137]

A. No; I didn't stay up there.

Q. Do you know what he did up there?

A. I didn't see him do it.

Q. Very well, if you didn't see him. What time did you leave West Seattle yard that morning?

(Testimony of Erwin P. Larson.)

A. Shortly after 7:00 some time.

Q. Were you on the bridge, do you remember?

A. No; I was back aft taking in the lines.

Q. I mean after you got clear of the dock.

A. After we got clear of the dock, yes.

Q. When the ship leaves the dock where is the second mate's station, making dock or leaving the dock?

A. Well, me and the third mate take turns about that. Sometimes I am back aft and sometimes I am on the bridge. It all depends on who wants to go back aft or who wants to stay on the bridge.

Q. After you got the ship clear of the dock at West Seattle where did you go and what did you do?

A. I went up on the bridge for a while, until we got across to Arden Salt Dock.

Q. Who was handling the navigation of the vessel at that time, from West Seattle to the Arden Salt Dock?

A. The captain.

Q. What course were you steering? I do not mean the point course, but was it magnetic or otherwise?

A. I couldn't say that. I wasn't there when we left the dock. I just got there after we left, so I couldn't tell.

Q. About what time did you arrive at Arden Salt Dock, if you remember?

A. Somewhere around 8:00 o'clock. [2138]

(Testimony of Erwin P. Larson.)

Q. Do you recall how long the vessel laid at Arden Salt Dock that day?

A. Until sometime in the afternoon, when we left and went to Smith's Cove.

Q. Is that otherwise referred to as Pier 40?

A. That is the same thing.

Q. Generally, what are your duties aboard the "Denali" as second officer?

A. Practically the same as the third mate, except I have the upkeep of the pilot house and the equipment.

Q. What equipment do you refer to?

A. The charts and all books relating to navigation.

Q. You mean the navigational equipment?

A. Yes.

Q. You have been referred to here in the course of this trial as the navigating officer. Tell us, please, what duties you have with particular relation to navigation, different from the other officers?

A. There is no difference between me and the third mate, except, as I said, that I took care of the pilot house equipment. All there is to the navigating officer—well, I don't know—they call the second mate the navigating officer—I never do any navigating, except the same as the third mate.

Q. Who is the navigating officer on your watch?

A. The captain, of course.

Q. Who is the navigating officer on the opposite watch?

(Testimony of Erwin P. Larson.)

A. The pilot.

Q. Now, Mr. Larson, just tell us what examination you made of the ship's navigating equipment. By the way, where [2139] was it put aboard?

A. The equipment?

Q. Yes.

A. I took the equipment on board in West Seattle the day before we left there. The system we have in them ships is that when every ship arrives in the fall like they do and tie up, all the equipment is put in a big box and nailed up, and it is marked on the top what ship it belongs to, and is put in a storeroom, locked up the whole winter, except when anybody from the ship wants to get the equipment out.

Q. Did you get the navigating equipment, or the ship's equipment?

A. I did.

Q. Did you put it aboard the ship?

A. I did.

Q. When did you make a check of that equipment and go through it?

A. I checked the box the same day I got it on board. There is always a list—the man that was there before and put the box away, he left a list of the equipment that was in the box when it was put in the box in the fall, and all you have to do is check over that list to see that everything is in the box when you take it out of there. And then we check it over again to see if there is anything else that we need or that we want for the next season.

(Testimony of Erwin P. Larson.)

Q. Mr. Larson, were the ship's charts in the box?

A. Oh, no. The ship's charts are always kept on board the ship. [2140]

Q. You spoke of navigating equipment; what equipment was in the box that was placed ashore, and that you put back aboard the ship?

A. The azimuth mirror, the parallel rulers, dividers, and all the books relating to the navigation of the ship, like the azimuth tables, Coast Pilots, and things like that. Of course there are things we have to order, like nautical almanacs, because of course they are new every year, and tide tables and current tables, and like the Canadian light list, and the American light list, and the Canadian tide tables—they are supplied free of charge.

Q. We will get to that later, Mr. Larson. I want to get first the equipment that you put aboard from the store room, belonging to the "Denali". Was the pelorus in that box?

A. No. It is always kept on the ship, the same as the compasses. You never take the pelorus off the ship—it is too bulky.

Q. Did you make a check of the ship's charts or navigating books, nautical publications, etc.?

A. I did.

Q. Where were you when you did that?

A. Well, I checked the equipment we had in the box. We had the azimuth tables and Coast Pilots, and American and British Columbia, and the rest of the equipment we got from Pier 2, like tide tables

(Testimony of Erwin P. Larson.)

and light lists, and almanacs we had to order for that year, which we always do.

The Court: I understood all that was in the box.
[2141]

Mr. Long: No, Your Honor. We are getting along too fast.

The Court: And also, he is repeating something he has already said.

Mr. Long: That is correct. He didn't quite get my question.

Q. (By Mr. Long) Let us take the charts first, and your publications. Where were you when you checked those, or where was the ship?

A. We started after we were over at the Salt Dock.

Q. Tell us what you did with reference to checking your charts. Where were they?

A. In the chart room, in the drawers and in the lockers. The way we check them we have the latest catalogues——

Q. What catalogues?

A. Chart catalogues, Canadian and American, and we will take the charts out on the chart table and one man will sing out the numbers that are there and the other man will check them off on the catalogue.

Q. Who assisted you in doing this?

A. Mr. Lawton, the third mate.

Q. What charts did you have? I do not mean by number, but what areas did they cover?

(Testimony of Erwin P. Larson.)

A. We had the full set from Seattle; Puget Sound, British Columbia, Southeast and Southwestern Alaska, and Bering Sea.

Q. Did you in checking your charts make any notes for requisitioning or buying new charts?

A. Yes; I made some requisitions for some new charts, maybe a dozen or a dozen and a half. [2142]

Q. Handing you, Mr. Larson, Petitioner's Exhibit No. 47, the last page dated May 13th, which is a requisition, I will ask you if that shows the numbers of any charts, and if you know what charts they were?

A. Well, I cannot remember the locations of the charts, but those are the charts I ordered. I got them all.

Q. How do you do that, Mr. Larson? You check through your charts and order these charts?

A. Well, we check through the chart catalogues and through the "Aid to Mariners".

Q. How do you go about getting those that you want?

A. I hand the requisition, my list, as I call it, in to the chief officer, and he makes out the requisition for all the things that belong to the ship.

Q. Was that Mr. Cleasby?

A. Yes.

Q. Is this Mr. Cleasby's signature here (showing)?

A. I think it is, yes.

Q. Did you receive those charts before the ship sailed?

(Testimony of Erwin P. Larson.)

A. I did.

The Court: Did you receive them on board the ship?

The Witness: Yes; we did.

Q. I notice here there is a requisition for navigating dividers, a protractor, and parallel rulers, 18 inch, which is apparently crossed off. Will you tell us whether you got those instruments, and how?

A. I saw Mr. Murphy the day after this requisition was handed in, and he told me to go to West Seattle and get it out of the storeroom, because we always have spare equipment there, and he told me if I didn't find what I [2143] wanted to go up to an instrument store and get it.

Q. Did you find what you wanted at West Seattle?

A. I got everything I wanted there.

Q. I notice this set of parallel rulers is referred to here as 18 inches; did you have any other set of parallel rulers already on board?

A. We had a big pair, but it was a little too big, in my opinion, for small work, and I wanted a different size.

Q. Referring again to Petitioner's Exhibit No. 47, also a requisition, under date of May 13th, it lists 2 only American tide tables, Pacific Coast; 2 only American current tables, Pacific Coast, and 2 only, Nautical almanacs. Did you order those?

A. Yes.

Q. Did you receive them aboard the "Denali" before you sailed?

(Testimony of Erwin P. Larson.)

A. I did.

Q. Before the "Denali" sailed did you receive any "Notice to Mariners"?

A. Yes; I did.

Q. What are "Notice to Mariners"?

A. Well, it is a small pamphlet printed by the United States Government, and the Canadians have the same thing, and they are supplied free of charge to any ship and every ship.

Q. Where do you get those?

A. Well, at the Alaska Steamship Company. Each ship has got its own mail locker on Pier 2.

Q. A mail box, is that what you call it?

A. Well, it is quite a big box, about 24 x 24 or 20 x 20. [2144] All the mail for each ship is always put in the same box.

Q. What did you obtain from there?

A. I got all the mail for the ship, including the "Notice to Mariners", American and Canadian, and the light list and tide tables, which are supplied free of charge by the company. I don't know who supplies them, but they are always supplied to the ships. You do not have to order them.

Q. What other publications were aboard the vessel as part of her equipment? [2145]

Q. Now, what other publications were aboard the vessel as part of her equipment, generally? I don't mean to go into all the detail of it, but just generally?

(Testimony of Erwin P. Larson.)

A. Well, she had one Pacific Coast Pilot; two Alaska Pilots and one British Columbia Pilot, printed by the United States Government.

The Court: In this answer of yours you are referring to records or books or publications, are you?

The Witness: Well——

The Court: (Interposing) Just say yes or no.

The Witness: Yes, sir.

Q. (By Mr. Long) Did you have a bearing board as part of the navigating equipment?

A. Yes, sir.

Q. What kind was it, sir?

A. A standard Hanson bearing board.

Q. How about the publications—the navigation lists and those required by the Steamboat Inspectors, were they aboard?

A. Yes, sir.

Q. And azimuth tables?

A. Yes, sir.

Q. Any logs, log books or deviation boards on board?

A. Yes, sir.

Mr. Ryan: We object to that as being leading, if Your Honor please.

The Court: Yes.

A. Yes, sir. Navigation books and log books and deviation books.

Mr. Long: It is leading, that is true, but it is [2146] difficult to remember all these details. I agree with that, Your Honor, that it is leading,

(Testimony of Erwin P. Larson.)

but I want to direct his attention to these to refresh his memory.

Mr. Ryan: I think it would be better to exhaust the witness' own knowledge first.

The Court: Ask him if there was anything else.

Mr. Long: Yes.

Q. (By Mr. Long) What else did you have there with reference to navigation equipment on board—publications, and so forth?

A. About everything relating to the navigation of the ship; the Coast Pilots—

The Court: (Interposing) You have said that. Ask him if he had anything else.

Mr. Long: What can you say, Mr. Larson, as to whether the "Denali" was properly and fully supplied and equipped with all the navigating documents, charts, Hydrographic publications, light lists and notices to mariners, and similar publications, at the beginning of this voyage?

A. Everything.

Q. And were they up to date?

A. Yes, they were up to date. They must be up to date—the notices to mariners must be up to date because they come out every week or every seven days.

Q. Now, the notices to mariners, what was done with those aboard the ship? Just explain to the Court how they are handled.

A. Well, on a ship like the "Denali" and on all Alaska ships running to Alaska on a certain trade

(Testimony of Erwin P. Larson.)

like that, we [2147] have a book for that purpose in which we put all the notices to mariners relating to Puget Sound, and the same thing for those issued by the Canadian Government for the British Columbian waters, and for Southeastern and Southwestern Alaska. You put out certain pieces of the pamphlet and you glue them in this book for that reference.

The Court: Did you say "for further reference"?

The Witness: Yes, sir.

Q. (By Mr. Long) And did you do that in this instance?

A. Yes, sir.

The Court: At this time we will take a five minute recess.

(Recess)

The Court: Resume the stand, Mr. Larson, and you may continue with your examination, Mr. Long.

Q. (By Mr. Long) Now, Mr. Larson, you say that you got the notices to mariners at Pier 2. Can you tell us what period of time those covered that you secured?

A. From the time that the ship tied up in the port until the time that we left.

Q. Now, you haven't mentioned patent logs or taffrail logs. Did you have patent logs or taffrail logs on board the ship?

A. Yes, three of them.

Q. Do you remember what kind they were?

(Testimony of Erwin P. Larson.)

A. One of them—two of them was Walker logs. I know that. I don't know the name of the third one. [2148]

Q. How about the leads and sounding lines, and so forth?

A. Yes. We had patent sounding lines and hard lead deep lines.

Q. Did you have the latest light lists?

A. Yes, sir.

Mr. Summers: We object to that. That is leading.

Mr. Long: Yes, I know it is leading, but—

The Court: (Interposing) Try to avoid leading questions.

The Witness: We were supplied those from Pier 2 free of charge.

The Court: The witness should have in mind that when a question is asked, he should consider the specific questions—the specific form of it. Counsel cannot use words which suggest to you the answer that he wishes you to give.

The Witness: I see.

The Court: So you try to make your answers as accurate and as complete and as full as you can.

The Witness: All right, Your Honor.

Q. (By Mr. Long) Did you have any instruments aboard taking observations of the sun?

A. An azimuth mirror and pelorus.

Q. What other instruments did you have, or did the officers have?

(Testimony of Erwin P. Larson.)

A. I have got my own sextant, like any other officer would have.

Mr. Ryan: I cannot understand it.

The Witness: I have got my own sextant like any other officer has. [2149]

Mr. Ryan: I still cannot understand the answer. Will you read it, Mr. Reporter?

(Answer read)

The Court: The trouble is with his pronunciation of the word "sextant". Try to be distinct, will you, please?

The Witness: Yes.

Q. (By Mr. Long) Now, tell us, whether you secured the ship's chronometers, and if you did, where?

A. I got the clocks belonging to the ship from the store room at West Seattle, and the chronometer was brought aboard at Pier 2.

Q. Now, were you aboard the vessel, Mr. Larson, while she was shifting around the harbor at any time before leaving?

A. On every move that she made.

Q. Now, tell us what you did with reference to any check of the compasses.

A. Well, the captain instructed me to check the compass at every heading of the docks.

Q. And what did you do?

A. I did that.

Q. Both compasses or one?

A. Well, I took the heading out of the standard compass and laid it out on the chart, and I com-

(Testimony of Erwin P. Larson.)

pared the two compasses, the steering compass and the standard.

Q. And what did you find with reference to the accuracy of the compasses?

A. You mean the standard compass?

Q. Yes, and the steering compass—both of them.

[2150]

A. I never found any big deviation; maybe half a degree to a degree.

Q. And what did you find the result by comparing the standard compass and the steering compass?

A. Maybe a degree and a half or two degrees.

The Court: On which one now?

The Witness: On the steering.

The Court: On the steering?

The Witness: Yes.

The Court: The last answer refers to the deviation on the steering compass?

The Witness: Yes.

Q. (By Mr. Long) Did you make any inspection of the compasses with reference to their physical condition?

A. I did.

Q. Just tell us what you did.

A. I saw that there were no bubbles in them and they were free, working free in the gimbals.

Mr. Ryan: What was that answer?

The Court: He said that he showed there were no bubbles in them, and that they were working free in the gimbals.

(Testimony of Erwin P. Larson.)

The Witness: I saw that there were no bubbles in them.

Q. (By Mr. Long) Did you examine the compass cards?

A. Yes. They were nice and clear.

Q. Were there any deviation cards posted on the ship?

A. Yes, sir.

Q. Where were they posted?

A. In the chart room. [2151]

Q. Do you remember their date?

A. No, I don't remember the date. It was 1933 some time. I cannot remember the date. Some time during July in 1933.

Q. While you were on the vessel and she moved about the various docks, what, if anything, did you observe Captain Healy doing in connection with the taking of any bearings?

A. Oh, I didn't see him taking the bearings exactly, but I know that he was up on top of the pilot house taking bearings.

Q. Did you report to Captain Healy your findings, the result of your observations on the compasses?

A. I did.

Q. As to their condition?

A. I did.

Q. What did you report to him?

Mr. Ryan: Just a minute. If that report is in writing, produce the report.

(Testimony of Erwin P. Larson.)

Mr. Long: It was not in writing.

The Court: Ask him whether it was or was not in writing.

Q. (By Mr. Long) Was it in writing?

A. No.

Q. Just tell us what you reported to Captain Healy.

A. I reported to Captain Healy that I was satisfied in my own mind that the compasses were in good working order.

Q. Now, Mr. Larson, do you recall on what date the vessel left Pier 2?

A. Yes. [2152]

Q. What date was that, and the time?

A. May 16th, shortly after 5:30 or 5:40 in the morning.

Q. Were you on the bridge?

A. I was on the bridge, yes, sir.

Q. And who else was there?

A. The captain and a quartermaster.

Q. And where did the vessel go?

A. It backed out from Pier 2 and proceeded out towards Four Mile Rock, and from Four Mile Rock out towards West Point, where we stopped and——

Q. (By Mr. Long, interposing) Just a minute. That is all I asked you.

The Court: Four Mile what?

Mr. Long: Four Mile Rock.

The Witness: Four Mile Rock.

Mr. Long: That is a point.

(Testimony of Erwin P. Larson.)

The Court: R-o-c-k?

The Witness: Yes, sir.

Q. (By Mr. Long) What did you do when you got off West Point?

A. We stopped.

Q. Now go ahead and tell us what you did. Did you take any bearings, or did you do anything with relation to taking any bearings?

Mr. Ryan: I object to that as highly leading.

Mr. Long: It is.

Mr. Ryan: I have made this objection time and time again, and I insist upon it.

The Court: Sustained.

Q. (By Mr. Long) What did you do then, Mr. Larson? [2153]

A. We stopped the vessel, or the captain stopped the vessel, and the powder boat came alongside, and the captain instructed me that he was going to take some bearings, and I got the azimuth mirror up and I got my clock or my watch out for local time, and we headed that over towards the west shore where we started to take bearings, on West Southwest, and we swung all around to Northeast, which took us approximately an hour—from seven to shortly before eight—to a couple of minutes before eight o'clock.

Q. What was the condition of the weather then?

A. Clear.

Q. Was the sun out?

A. Yes, sir.

(Testimony of Erwin P. Larson.)

The Court: Keep your voice up. You see, in this room we hear everything that we should not hear, and we cannot hear the things that we have got to hear.

The Witness: I will try to.

The Court: Speak every word clearly and distinctly.

The Witness: Yes.

Q. (By Mr. Long) You say that you swung it and took bearings from South Southwest or West Southwest to Northeast. You took azimuth bearings. Now, you took azimuth bearings. Now, just tell us what you and Captain Healy did up there in your own words.

A. The Captain—he took his separate bearings on each point, and I took my separate bearings on each point, and we started on West Southwest and swung her around right from—from West to South until we got over to [2154] Northeast.

Q. And what instruments were you using to take these bearings?

A. The azimuth mirror.

Q. And what are the bearings called that you took?

A. The bearings of the sun.

Q. And what did you do with the information thus secured?

A. Well, after we got through taking the bearings we went down in the pilot house and figured out the bearings, and after that we marked the deviations in the deviation book.

(Testimony of Erwin P. Larson.)

Mr. Ryan: May I have that answer read?

The Court: Read the answer.

(Answer read)

Q. (By Mr. Long) Did you take your bearings separate from Captain Healy?

A. I did—sure.

Q. And did you make any comparison of your calculations and deviations as secured with those secured and calculated by Captain Healy?

A. I did. They compared very closely to Captain Healy's.

Q. Now, who was in the bridge—in the pilot house, I should say, while you were taking these bearings?

A. Well, the quartermaster. I don't know his name, the quartermaster and the third officer.

Q. And what was the third officer doing?

A. We had to have somebody to handle the telegraph, and he was handling the telegraph by orders of the captain. If we went slow ahead, or stopped, he handled it accordingly. [2155]

Q. Now, Mr. Larson, were the deviations secured and as entered in the azimuth book—were your deviations entered separately from Captain Healy's? Or both together, or tell us how it was done?

A. He handled his own observations or bearings, and I handled my own—he entered his own observations or bearings and I entered my own.

(Testimony of Erwin P. Larson.)

Q. Now, what deviations did you find, Mr. Larson, on the various headings? I don't mean to say each detail heading, but generally speaking.

A. Well, from west southwest up towards the north she was practically magnetic.

Q. What do you mean when you say, "practically magnetic"?

A. Well, half a degree or three-quarters of a degree.

Q. Yes. Go ahead.

A. And was so westerly, and when she dropped north, she was magnetic on the standard. Over towards the northeast she commenced to get easterly deviation.

Q. All right. What was the maximum deviation you found, and where was it?

A. Oh, close—on the northeast—close to two degrees.

Q. Tell us, Mr. Larson, why you took courses—why you took your deviations or your azimuths over that area or direction of the compass, if you did take them?

A. Well, that was for the purpose of checking the compass or taking the bearings on all the courses that we would be needing going to Alaska at that time.

Q. Is that portion of the compass quadrant from south—what was your first one?

A. West Southwest to Northeast. [2156]

(Testimony of Erwin P. Larson.)

Q. Is that portion of the compass quadrant from West Southwest to Northeast—did that cover all the courses that you would steer going to Alaska?

A. Yes. It takes in pretty near half of the compass.

Q. And from your experience, Mr. Larson, if you have no material deviations in that area or on that portion of the compass of which you took observations or deviations, what would you expect on the opposite points?

A. Well, not any more on the other side of the compass.

Q. And as a result of these observations and deviations thus secured, what is your opinion as to what, if any effect, the cargo had on the compasses—the cargo that you had loaded?

A. The cargo did not affect the compasses.

Q. Is it possible to determine before loading cargo what, if any, effect it will have upon the compasses?

A. Oh, no. Nobody can do that.

Q. How can you determine the effect, if any, that the cargo has upon the compasses?

A. After the ship is loaded, you mean?

Q. Yes. How do you do it?

A. Well, we always have to take azimuths if we are loaded or not. We always take an azimuth on the different headings if she has got a cargo on board or not.

(Testimony of Erwin P. Larson.)

Q. Were there any standing orders given the Steamship "Denali" with reference to *take* azimuths?

A. Yes, sir.

Q. Tell us what those were.

A. There was a standing order from the master that an azimuth must be taken on every heading when possible. [2157]

Q. Is that the universal custom on all ships?

A. On all ships, yes, sir.

Q. Now, did you make any comparisons of the deviations that you obtained with previous deviation books? Let me ask you this first, were there any previous deviation books on the ship?

A. Yes, sir.

Q. And did you make any comparison?

A. Yes. I looked at them.

Q. How did they compare, generally?

A. Pretty closely, about a half a degree, that is all.

Q. Now, on this voyage and before the stranding, were there any azimuths taken by yourself?

A. We took azimuths on every heading when it was possible—when the sun was out.

Q. I see. What is the best time of day to take azimuths?

A. Oh, around—from 7:00 to 10:00 o'clock.

Q. In the morning?

A. In the morning, and from 3:30 to 7:00 in the evening. That is, if the sun is not too low, of course. It all depends on the time of the year.

(Testimony of Erwin P. Larson.)

Q. I see. Generally speaking the heavens are usually taken during the morning or during the afternoon late, is that right?

A. During the morning and during the afternoon late, yes, sir.

The Court: Well, that is the only time when you have sunlight with which to take them by, is that not right?

The Witness: No. We have sunlight in the middle [2158] of the day, too, but as a rule we never take them when the sun is too high.

The Court: By that answer that you gave just before the Court asked this question, when you said early in the forenoon and late in the afternoon, what time do you mean by that?

The Witness: From approximately seven to about ten-thirty in the morning, and from three o'clock in the afternoon to seven.

The Court: Why during those hours instead of later hours in the forenoon and earlier hours in the afternoon?

The Witness: Because in the morning before that the sun is too late.

The Court: And what about after that in the morning—after 10:30?

The Witness: Well, after that the sun is too high.

The Court: All right. That is sufficient. Proceed.

(Testimony of Erwin P. Larson.)

Q. (By Mr. Long) Now, what time on the 16th did you go on watch, and where was the vessel at that time, if you recall, approximately?

A. I went up on watch—I think I was called around a quarter of five, and then I had my coffee and went on the bridge when the ship left Pier 2.

Q. And what watch did you stand that day—that evening?

A. You mean in the morning, do you?

Q. Yes, in the morning first.

A. Or in the evening?

Q. I beg your pardon?

A. In the evening? [2159]

Q. All right, in the evening.

A. From six to twelve.

Q. From six to twelve midnight?

A. Yes, sir.

Q. And with what other officer did you stand that watch?

A. I stand that watch with the captain.

Q. Captain Healy?

A. Captain Healy.

Mr. Ryan: What is that?

The Witness: Captain Healy.

The Court: That was the other officer with whom he stood watch.

Q. (By Mr. Long) When were the watches set on the “Denali”—the sea watches, do you remember?

A. Well, the sea watches, so far as the mates are concerned—

(Testimony of Erwin P. Larson.)

Q. (Interposing) When were they set, that is the question that I asked you.

A. That morning? When I went on my watch that morning?

Q. Yes. What watches did you stand at sea on the "Denali"? Just tell us.

A. Well, my watch at sea was from six to eight in the morning, and from six to twelve in the evening.

Q. How many hours a day in twenty-four.

A. Well, that is eight hours.

Q. And what watch did the third mate stand?

A. He stood from 12:00 o'clock midnight until 6:00 in the morning, and from 4:00 to 6:00 in the afternoon.

Q. How many hours a day did he stand?

A. Eight hours.

Q. Now, Mr. Larson, tell us, if you will, how the ship made [2160] her courses from the time that you left Seattle and while you were on watch, of course.

A. Fine.

Q. Did you take any four point bearings on any objects or anything like that?

A. Yes, sir.

Q. How did the courses check out with reference to being magnetic or otherwise?

A. Fine.

Q. Did you experience any difficulty with your steering gear?

(Testimony of Erwin P. Larson.)

A. Not a bit.

Q. Or with any of the ship's equipment?

A. No, sir.

Q. Did you observe or did you find any deviations of the compass that had been determined on your swing at West Point?

A. No. I took azimuths and they compared closely with the ones that I took at West Point.

Q. What do you mean by "closely"?

A. Inside of one-tenth of a degree, or two-tenths of a degree—so little—so that it don't amount to nothing.

Q. How close can a helmsman steer—can he steer a degree?

A. Well, you can tell him to steer a degree, but he would not be able to keep her on a degree.

Q. How many degrees are there in a compass circle?

A. 360.

Q. And how many points?

A. 32. [2161]

Q. How many degrees in a point, approximately?

A. Oh, around 11 or a little better.

Q. And when you speak of a quarter point and an eighth point, how many degrees in a quarter point, approximately?

A. Two and three-quarters or three.

Q. And in an eighth of a point is how many degrees?

(Testimony of Erwin P. Larson.)

A. In an eighth of a point how many degrees?

Q. Yes, approximately.

A. Approximately two degrees.

Q. And what was the practice on the "Denali", and on the other vessels of the Alaska Steamship Company, to steer by points or degrees?

A. Well—

Q. (Interposing) What orders did you give the helmsman with reference to steering, in points or degrees?

A. Oh, in points you give him on the "Denali", and on most of the ships that I have been on, on most of them you give by points.

Q. Now, the compass cards—both standard and steering compasses—how were they marked off?

A. Well, they were the regular standard compasses—Ritches.

Q. How were they marked off, with points or degrees, or both?

A. Both.

Q. Now, what time did you get on watch on the evening of May 18th—the night before the stranding?

A. 6:00 o'clock in the evening.

Q. With whom were you on watch? [2162]

A. Well, the captain.

Q. Do you remember approximately where the ship was then?

A. Yes. She was coming up towards Bonilla Island.

(Testimony of Erwin P. Larson.)

Q. Could you fix that position a little more definitely by reference to the log book?

A. Oh, I would not need the log book on that. I remember. She was five or six miles or so from Bonilla Island.

Q. Do you remember what course you were on then?

A. No, I do not. I paid no attention to the courses.

Q. Could you refresh your mind from the log book, Claimants' Exhibit A-4?

A. Yes.

Q. Will you do so? (Handing Claimants' Exhibit A-4 to the witness).

A. Northwest by West a quarter West on the standard, and Northwest by West on the pilot house compass.

The Court: What is that?

The Witness: Northwest by West $\frac{1}{4}$ West on the standard and Northwest by West on the pilot house compass.

The Court: You will have to slow down a little bit.

The Witness: All right.

Q. (By Mr. Long) Now, was any bearing taken that evening by anyone on your watch—a four point bearing?

A. Yes. We took——

Q. (Interposing) Just tell us who took it, and how it was taken.

(Testimony of Erwin P. Larson.)

A. Oh, I took a bearing of Bonilla Island shortly after I went up there, and I took a bearing of Bonilla Island [2163] after I got it abeam, and I took a bearing of the old Triangle Island Light—the Triple Island Light.

Q. You say “The Old Triangle Island Light”.

A. Yes.

Q. You used to call it that, did you?

A. That is where the light used to be.

Q. And that is now referred to as Triple Island Light?

A. Yes, sir; it is now referred to as Triple Island Light.

Q. What time did you take that bearing, and what kind of a bearing was it?

A. It was a four point bearing on the Hanson bearing board. That means a forty-five degree angle from the bow.

Q. Do you recall what time you took that?

A. No, I don't.

Q. You can refer to the log book if you need to.

A. (Looking at Claimants' Exhibit A-4) 10:49 P. M.

Q. Is that in your own handwriting?

A. Yes, sir.

Q. Mr. Larson, did you know whether or not Captain Healy was trying to go through Caamano Passage?

A. Yes. The captain told me the day before—I think it was the 17th—let me see, the 16th—yes,

(Testimony of Erwin P. Larson.)

the 17th it was, I think, that he would go through Caamano Passage.

Q. Referring to Claimants' Exhibit A-10, I will ask you if you know what that is?

A. That is a chart of Southeastern Alaskan waters—Dixon's Entrance is what they call that.

Q. What numbered chart is that?

A. 8102. [2164]

Q. Have you ever seen that chart before?

A. Yes, sir.

Q. Where?

A. On board the Steamship "Denali".

Q. Who put the lines on the chart that are there?

A. I did.

Q. When did you put them on? Did you put them on at the same time as—let me ask you first that.—

A. (Interposing) No, sir, I did not.

Q. (Continuing) Well, when did you put the lines on and refer to which lines that you put on at that time.

A. The lines as marked here were put on on the 17th in the forenoon. I laid them out.

Q. For what purpose?

Mr. Ryan: Indicating what lines, please?

The Witness: Them big ones here (indicating).

Q. (By Mr. Long) Well, we can get it this way; indicating all of the lines except that line marked "North by West 1/8 West", going through Caamano Passage.

(Testimony of Erwin P. Larson.)

A. Yes, sir, that is right.

Mr. Long: Is that satisfactory?

Mr. Ryan: Yes. [2165]

Q. (By Mr. Long) Did you know what your first port of call was to be?

A. Yes; Metlakatla.

Q. Why did you put these lines down; just tell us.

A. Oh, that is just—

Mr. Ryan: (Interposing) Indicate the lines.

Mr. Long: The lines that he just referred to. All the lines on the chart, with the exception of that line marked Northwest $1/8$ West, going through Caamano Passage.

Q. When did you put those down?

A. On the 17th.

Q. Why?

A. I always do. I like to know the distances between the points, like Triple Island and Metlakatla, and Triple Island and Cape Shucklin, and I always mark it on a notebook that I used to keep at the time. I have got three or four of them. All the points in Alaska, canneries and different lights, for further reference.

Q. That notebook you refer to, is that part of the ship's equipment, or is it your personal equipment?

A. That is my personal equipment. I have got four of them here.

Mr. Ryan: Mr. Long, will you stand back a little. I cannot hear the witness. What was that last answer? (Answer read.)

(Testimony of Erwin P. Larson.)

The Court: The Court desires further information from this witness touching any use, and if any use what use was made of those lines which he says he put on there.

Mr. Long: I am going into that, Your Honor, with [2166] the other chart and this one, as well.

Q. (By Mr. Long) Referring first to this chart, was this one of the charts that you received aboard the "Denali" pursuant to the requisition you made?

Mr. Ryan: I object to that as leading. Please ask the witness the direct question.

Mr. Long: It is marked right on here.

Q. (By Mr. Long) When did you get this chart on the ship?

A. I brought it on board at Seattle.

Mr. Ryan: May I ask counsel to stand farther from the witness.

The Court: He cannot, because he has to assist the witness in holding the map, but the Court will have his answer repeated. The witness will hold up his voice, and counsel will, too.

Q. (By Mr. Long) Tell us what other chart did you have of this area, if any?

A. We had two or three charts. You mean the particular area of Dixon Entrance?

Q. Dixon's Entrance, Caamano Passage, Zayas and Dundas Islands, and that area.

A. We had two or three of them aboard.

Q. Did you have any different scale charts than this No. 8102, which you are now holding?

(Testimony of Erwin P. Larson.)

A. Oh, yes; we had a big scale, and a smaller scale.

Q. Referring to Petitioner's Exhibit No. 33, being chart No. 2828, did you have a copy of this chart aboard?

A. Absolutely.

Q. Were any lines drawn on that in connection with the area around Caamano Passage and Triple Island Light? [2167]

A. Yes. That is the captain's navigating chart when he is navigating.

Q. Who put the lines on that chart?

A. The captain.

Q. On the evening in question what charts or chart were you using in connection with the navigation, approaching a point off Triple Island Light?

The Court: If you were using any.

The Witness: You mean approaching the Island?

Q. Yes.

A. Well, that is the chart the captain was navigating by.

Q. You refer now to Petitioner's Exhibit No. 33?

A. Yes.

Q. Were there any courses drawn on that chart?

A. The captain had his own courses drawn on that chart.

Mr. Long: Counsel has just called my attention to the inquiry by the Court, and I neglected to go into that.

(Testimony of Erwin P. Larson.)

Q. What use did you make of those lines that you put on this chart, Claimants' Exhibit A-10? Tell the Court what you put them down for, and what use you made of them?

A. Well, I just said that I measured the distances between the different points, and I mark them down in a book and use it for further reference late on. If I want to know the distance between certain points all I have to do is look in my book, without measuring on the charts.

The Court: In connection with the navigation of the ship, what use, if any, was made of those lines which you put on that chart?

The Witness: Oh, that had nothing to do with the [2168] navigation of the ship. That was like I said, for my own information.

The Court: Very well. Now, referring to Petitioner's Exhibit No. 33, did you mean to say when counsel was inquiring about that a moment ago that that particular chart was on board the ship on this voyage in question?

The Witness: That chart?

The Court: Yes.

The Witness: Absolutely.

The Court: That particular one?

The Witness: That one, no—the same kind. There is no difference, Your Honor.

The Court: All right.

Q. (By Mr. Long) I will ask you, Mr. Larson, to observe the date of the printing of this chart.

(Testimony of Erwin P. Larson.)

This chart is also stamped "October 6, 1937", but I will ask you as to the printed date of the edition of the chart.

A. It is the edition of the 5th of October, 1922, the same edition as we had. There has been no new issue of that chart printed.

Mr. Ryan: I would like the record to show that the witness was reading from the chart.

Mr. Long: Yes; I asked him to read from it, Mr. Ryan.

The Court: You may proceed now.

Q. (By Mr. Long) What time did you go off watch on the evening of May 18th?

A. Well, I was relieved by the third mate. He came up approximately the same time as the pilot, 11:50 in the evening, and I stayed up there until two or three minutes after 12:00, when I went below. [2169]

Q. Did you say 11:15 or 11:50?

A. 11:50.

Q. That is ten minutes to 12:00?

A. Yes.

Q. Did you take the log at 12:00 o'clock?

A. I didn't take it. It was brought up by the quartermaster.

Q. I realize you personally did not read it, but was it done under your direction?

A. Oh, yes. They always do.

The Court: Will you ascertain what log he is referring to?

(Testimony of Erwin P. Larson.)

Mr. Long: I refer to the patent log.

The Witness: The patent log, yes.

Q. (By Mr. Long) Where is that on the ship?

A. It is located back aft. It is approximately 10 or 12 feet long, and we have it sticking over the side in order to have it clear of the ship.

The Court: That is sufficient.

Q. Is that also commonly referred to as the taffrail log?

A. It is the same thing.

Q. Or the patent log?

A. Yes.

Q. They are interchangeable terms?

A. Yes.

Q. At the time you left the bridge, Mr. Larson, could you see Triple Island Light?

A. Sure, I could see Triple Island Light.

Q. What was the visibility at that time?

A. Good.

Q. Tell us what the visibility was as to the lighted and [2170] as to unlighted objects.

A. Well, I could see Triple Island clear as a bell, and I saw the outline of the mountains of Melville Island, the island behind Triple Island.

Q. What island was that?

A. I think the name is Melville Island.

Q. Had you made any estimate, Mr. Larson, as to about what time the vessel would come abeam in the completion of her four point bearing?

A. I didn't expect to be off there until after midnight, and when we got the log at 12:00 o'clock

(Testimony of Erwin P. Larson.)

we saw that she would be approximately on the track. Of course I couldn't judge by 12:00 o'clock, but she would be approximately on the track.

Q. What do you mean, on the track?

A. By track we mean where the ship is supposed to be.

The Court: You mean the course, do you not; the course she was supposed to be making?

Q. (By Mr. Long) You mean the course, don't you?

A. Yes.

Q. Referring to the line on the chart which you are now holding in your hand, Claimants' Exhibit A-10, chart No. 8102, did you draw any other lines on that chart that evening?

A. Yes.

Q. What line did you draw then, and when did you draw it?

A. Oh, that line, I drew that approximately five minutes to 12:00. I was talking to the pilot in the chart room and he asked me how far I figured she would be off, and I said, "Oh, ten, eleven, eleven and a half miles." [2171]

Q. What do you mean, how far off what?

A. Off Triple Island.

The Court: Have him identify the line.

Q. Which line do you now refer to that you drew?

A. The line laid off from Triple Island, up to Caamano Passage.

(Testimony of Erwin P. Larson.)

Q. Is that marked with any indicating figures or letters?

A. Yes; I marked it as North by West $\frac{1}{8}$ West.

Q. Is that your handwriting (indicating)?

A. It is.

Q. And that is drawn on a point approximately how far from Triple Island Light?

A. I think I made it approximately 11 miles off Triple Island.

Q. Was that drawn before or after the ship came abeam of Triple Island?

A. That is just approximately my own figures, as I said; 11 miles.

The Court: No.

Q. Was it drawn before or after she came abeam?

A. Yes; it was drawn at five minutes to 12:00, I would say.

Q. Do you know what time the ship actually did come abeam? You were not on watch?

A. No; I wasn't on watch.

Q. You say you had some conversation with the pilot, that is, Capt. Obert?

A. Yes.

Q. Was he examining any charts, or looking at any charts?

A. He was examining the chart that the captain had his courses laid out on. [2172]

Q. You are pointing to the chart here, Petitioner's Exhibit No. 33?

(Testimony of Erwin P. Larson.)

A. Yes.

Q. You mean a chart like this one, a copy of this one you have referred to before?

A. A copy of this one, yes, sir.

Q. The large scale chart?

A. The same as that.

Q. Do you know when the captain put his lines on the chart, his course lines?

A. He laid them that morning before; he was working with the charts in there.

Q. You didn't see him?

A. I didn't see him lay them, but I know he laid them, because it was his writing on the charts, and I know he laid them.

Q. According to this you were going up on what course, Mr. Larson, up to Triple Island?

A. Oh, I don't know; I can't remember the course.

Q. Well, look at the log book?

A. Northwest $\frac{1}{4}$ North, on the standard.

Q. All right. What course did you lay out, magnetic, to be made good, going through Caamano Passage? Did you lay it out on this chart here? You just read it a minute ago.

A. Oh, yes. I just laid the track, 11 miles off Triple Island, right up on that chart.

Q. What is that course you laid off?

A. The one I laid off?

Q. Yes. Take a look at it if you do not remember it.

(Testimony of Erwin P. Larson.)

A. North by West $\frac{1}{8}$ West. [2173]

Q. Is that the course mid-channel to be made good?

A. Yes; on this part it is.

Q. That is mid-channel?

A. Yes; on this chart here.

Q. That is North by West $\frac{1}{8}$ West, is that right?

A. Yes.

Q. Is that the same mid-channel track that the captain laid off on the large scale chart to which you have referred?

A. I couldn't say that. I didn't look. I just laid 11 miles off on this chart, and I can't remember what the captain had on his chart.

Q. Well, the point $10\frac{1}{2}$ or 11 miles off Triple Island, on the course you were going up on, what would be the magnetic track through the center of Caamano Passage?

A. $10\frac{1}{2}$ miles?

Q. About $10\frac{1}{2}$ or 11 miles, what would be the magnetic track through the center of Caamano Passage?

A. At 11 miles it is North by West $\frac{1}{8}$ West.

Q. And that is what you laid it?

A. Yes.

Q. Where were you when the ship stranded?

A. I was in my room, asleep.

Q. Tell us what you did? Did it awaken you?

A. Yes; I woke up, and I went out on deck and looked around.

Q. Which side of the ship, port or starboard?

(Testimony of Erwin P. Larson.)

A. My room was on the port side, so I naturally went out on the port side first.

Q. What did you see?

A. I saw the land there. [2174]

Q. What land?

A. Well, it was Zayas Island.

Q. Just tell us what you saw and how it looked to you, and what your impressions were.

A. When I got out on deck——

Q. (Interposing) Were you dressed then, when you went out on deck?

A. No; I went out right the way I was. I saw the land there and nice and clear, the way it looked to me when I saw it first. It looked to be about two or three miles off.

Q. Just what did you do, and what did you see?

A. I went up forward there and I saw Dundas Island on the other side.

Q. On your starboard side?

A. Yes.

Q. How did that look?

A. It looked to be about the same distance off. It was awfully deceiving, the whole thing, when I looked at both islands.

Mr. Ryan: I did not hear that answer.

The Witness: It was awfully deceiving.

Mr. Ryan: Please read his last answer. (Answer read as follows:

“A. It looked to be about the same distance off. It was awfully deceiving, the whole thing, when I looked at both islands.”)

(Testimony of Erwin P. Larson.)

Q. (By Mr. Long) How did the ship appear on the heading that she was then lying, with reference to being mid-channel or otherwise? Tell us what it looked like to you?

A. She appeared to me like she was heading right up mid-chan- [2175] nel.

Q. What did you do next? Did you find out later what the ship's heading was?

A. Well, I went in my room and I dressed and went up on the bridge.

Q. Who was there?

A. Well, the captain, the pilot, and the chief officer.

Q. Was the captain dressed?

A. Yes.

Q. What did you do? Just tell us in your own words what you did?

A. Well, the captain instructed me to take a bearing on the standard compass of Tree Point Light.

Q. What for?

A. Well, to locate where we was at. I would have done it myself, anyway, because I couldn't figure where the ship was at.

Q. What did you do?

A. I went up and took a bearing on the standard compass of Tree Point Light and reported it to the captain, and he told me to lay it out on the chart.

Q. What bearing did you get?

A. North by West.

(Testimony of Erwin P. Larson.)

Q. Did you lay it on the chart?

A. I did.

Q. What did it indicate with reference to where you were, where the vessel was?

A. The bearing took her right over the reef.

Q. What was the ship's heading, do you remember?

A. She was heading North half East on the standard. [2176]

Q. Were any other bearings taken on Tree Point?

A. The mate had taken his bearing and laid it out on the chart that the captain had his lines on, and I laid the same bearing out. It was absolutely the same as the mate's, right over the reef, by the pencil line.

Q. Do you know what bearing the mate secured?

A. I could see it on the chart.

Q. What was it?

A. The same as mine.

Q. What was that, magnetic?

A. North by West.

Q. How well could you see Tree Point Light at that time?

A. Well, I could see it good, plain.

Q. Did you see the light itself or the flare of it?

A. Oh, I saw the whole light, the light from the lighthouse.

Q. Do you know what the range of that light is?

A. About 15 or 16 miles.

(Testimony of Erwin P. Larson.)

Q. How far, approximately, if you remember, was this reef from the lighthouse, or the light?

A. A little better than 14 miles.

Q. I do not know whether I asked you or not; where was the ship's heading?—By that I mean how was the bow heading?

Mr. Ryan: You have asked him that before.

Mr. Long: I may have done so.

Mr. Ryan: I object to it as repetitious.

Mr. Long: If the Court please, may I ask him where the ship's heading was? I want to be sure of that.

The Court: I have heard it, but you can ask him again. [2177]

The Witness: She was heading North 1/2 East.

Q. (By Mr. Long) Was any effort made to back the ship off the reef?

A. The captain tried to back her off several times.

Q. With any success?

A. No.

Q. Did the ship move?

A. No, sir.

Q. What did you do then? Just tell us what you did.

A. Well, the captain instructed the mate and us, the second and third mates, to get the lifeboats ready and get all the crew ready to go in the lifeboats.

(Testimony of Erwin P. Larson.)

Q. By the way, what was the state of the weather or sea at that time, when you first went out on deck?

A. Calm.

Q. How soon was this after it stranded?

A. After I got out on deck?

Q. Yes.

A. Half a minute or a minute.

Q. You say you could see Zayas Island and Dundas Island, you have described that—could you see any other land?

A. Yes; I saw the mountains up in the sky, up behind Tree Point Light, up in Portland Canal.

Q. Referring to Petitioner's Exhibit No. 33, would you indicate on this chart where Tree Point Light is. Draw a red circle around Tree Point Light.

A. (Witness indicates on exhibit.)

Q. What mountains could you see?

A. I saw the high mountains up here, up in the sky, quite high. I don't know how high they are.

[2178]

Q. What does the chart indicate as to their height?

A. I cannot see that—1400 or 1500 feet, around there.

The Court: 1400 or 1500 feet.

Q. I call your attention to one 2000 feet, is that right?

A. Yes; 2068.

(Testimony of Erwin P. Larson.)

Q. What was the condition of visibility with respect to darkness or daylight? Tell us about what the condition was there?

A. Well, it was like it is up in the northern latitudes at that time of the year. It is deceiving air in the morning. Otherwise, it was plain all around, you could see for miles and miles.

Q. Was it dark or daylight?

Mr. Ryan: Will you read the last answer (last answer repeated.)

A. It was getting to be daylight shortly after that.

Q. What did you mean, Mr. Larson when you used the term "deceiving air"? Is that a term used by seamen, and does it have any significance? What do you mean by it.

A. Well, it is apt to fool anybody, any man going to sea, air like we had that morning.

Q. What did it affect?

A. Well, it affects the atmosphere. Sometimes the shoreline will look to be right on top of you and you might be three or four miles off—it will look to be only a mile or half a mile off; and then at other times again it will appear to be three or four miles off and you may only be one mile off.

Q. Do you experience that condition in Alaska with any frequency; is that common or otherwise?

[2179]

A. Yes; it happens quite often.

Q. Now, then, after you got the lifeboats ready just tell us what you did and where you went?

(Testimony of Erwin P. Larson.)

A. Well, after we got the lifeboats ready I got my crew, the fellows I was supposed to have in my boat, and we lowered the boat.

Q. Which side?

A. My boat was located on the starboard side. And there was a little swell coming up at the time, and when we got the boat down in the water of course we let go the boat falls, or the releasing gear—

Q. What happened?

A. I had to get away from that side because the side was setting me right up beside the ship, and it nearly smashed the boat.

Q. What happened then? Just tell us.

A. I told the captain, and he told me to go over on the port side, and I proceeded towards the stern of the boat, but the tide was quite strong, and I hollered up to the third mate on deck to give me a line down, to pass me a line down so I could hang onto the line in going around the stern, because there was quite a tide running there.

Q. Which way was the tide running, in which direction, as you observed it?

A. She was setting the lifeboat right towards the side of the ship.

Q. After you got around under the stern and clear of the ship did you observe which way the tide was running?

A. I could see it abaft the rudder of the ship, the tide [2180] setting around South Southwest, magnetic.

(Testimony of Erwin P. Larson.)

Q. Did you notice the direction in which the log-line was streaming at that time?

A. The log-line was bearing approximately the same, South Southwest.

Q. Was it directly behind, streaming behind?

Mr. Ryan: That is objected to as leading.

Mr. Long: It is leading, and I will withdraw it.

Q. With relation to a line directly astern of the vessel, how was the log-line streaming? Do you understand my question?

A. Yes.

Q. All right; tell us.

A. About 20 degrees.

The Court: At this point we will take the noon recess until 2:00 o'clock.

(Whereupon a recess was taken until 2:00 o'clock p. m., November 5, 1937.) [2181]

November 5, 1937,

2:05 o'clock P. M.

Court convened pursuant to adjournment;

All parties present.

The Court: Any other *ex parte* matters or matters on agreement? If not, you may proceed with the case on trial. Mr. Larson, resume the stand.

Mr. Long: Mr. Bogle asked me to advise the Court that he will be detained for a very few minutes.

The Court: You may proceed.

(Testimony of Erwin P. Larson.)

ERWIN P. LARSON,

resumed the stand for further examination.

Further Direct Examination

By Mr. Long:

Q. Mr. Larson, immediately before lunch I had questioned you concerning the angle that the logline was streaming from the stern of the vessel. I believe you replied, "approximately twenty degrees". Will you advise us, please, in which direction the logline was streaming from the stern of the ship?

A. South Southwest, approximately.

Q. And when you said "twenty degrees" would you advise us just what you meant by twenty degrees—from what?

A. From the stern—from the angle on the stern of the ship.

Q. Now, what was the practice of the "Denali" on this voyage comparing the standard and pilot house compasses? [2182]

A. The same practice as on any other ship, you always compare the standard compass with the steering compass.

Q. When was it done?

A. Whenever we changed our course—on every two hours. If you run a course any longer than two hours we always compared the two.

Q. Was that practice followed on this voyage?

A. Absolutely.

Q. Now, on the voyage north and while you were

(Testimony of Erwin P. Larson.)

on watch, did you take any bearings on shore objects, or otherwise?

A. Yes, sir, I did.

Q. Handing you Claimants' Exhibit A-4 would you indicate please—

The Court: (Interposing) Is that properly identified?

Mr. Long: Yes. It is Claimants' A-4.

Q. (By Mr. Long) Handing you Claimants' A-4, which is the pilot house log book, would you indicate the bearings to which you refer; not necessarily each of them, but some of them so that we will understand it?

A. Point No Point; Morrowstone Light; Sheringham Point Light.

The Court: Pronounce your words more distinctly.

The Witness: Sheringham Point Light; Tatoosh Island Light; Swiftsure Lightship.

Q. (By Mr. Long) And what kind of bearings were those?

A. Regular four point bearings. You take four point bearings abeam and when you get her abeam you take the bearing again. [2183]

Q. What does that give you? What is the purpose of that? What do you wish to ascertain by that method?

A. The position of the ship. You get the position of the ship off of the certain object.

Q. The position of the ship off that certain object?

(Testimony of Erwin P. Larson.)

A. Yes, sir.

Q. Now, when you were on watch on the 16th, 17th and 18th, on this voyage, did you lay out the magnetic track of this ship on those charts?

A. For the ship to run?

Q. Did you lay out your courses or tracks on the chart?

A. No, I never did.

Q. Who were they laid out by, by the officers or by Captain Healy?

A. Captain Healy did that.

Q. While you were an officer on the watch tell us whether or not the ship made good or ran those courses?

A. She did.

Q. Did you have occasion to make any allowance for the tide at any place?

A. Not to my knowledge.

Mr. Ryan: What was that answer?

The Witness: Not to my knowledge.

Q. (By Mr. Long) Who would set the course, if any allowance was made for tide on your watch?

A. The captain.

Q. The captain?

A. Yes, sir.

Q. What experience, Mr. Larson, have you had as an officer on watch of ships navigating Dixon's Entrance and adjacent [2184] waters?

A. You mean——

Q. (Interposing) What experience have you had?

A. You mean crossing Dixon's Entrance or——

(Testimony of Erwin P. Larson.)

Q. (Interposing) Yes, crossing Dixon's Entrance and those waters about Dixon's Entrance.

A. For the last two years I have been on a ship that was on that certain run of Hecate Straits on the west coast of Prince of Wales Island, and I can say that I crossed Dixon's Entrance approximately thirty-five times in the last two years.

Q. Now, as a result of your experience—

Mr. Summers: (Interposing) I would like to interrupt there, if I may, for a moment. You mean the last two years before the trial—before this trial?

The Witness: The last two years.

Mr. Summers: Since the "Denali" stranded?

The Witness: Yes, sir.

Mr. Summers: I thank you.

Q. (By Mr. Long) Now, had you ever been in Dixon's Entrance before the "Denali" stranded?

A. Yes.

Q. Now, as a result of your experience, Mr. Larson, what can you say as to the regularity of the tides encountered in Dixon's Entrance?

A. Well—

Mr. Ryan: (Interposing) I object to that on the ground that the witness has not been shown to have sufficient experience there to qualify him to give that answer, and, further, tides in Dixon's Entrance are shown [2185] on United States Government's charts, and this is apparently an attempt to open up the subject of whether the United States Government properly knows its subject in giving

(Testimony of Erwin P. Larson.)

information to mariners as to what the tidal currents are in that area.

Mr. Long: We will show that they are not correct.

The Court: The Court rules that the objection is sustained on the first ground stated by counsel, that his experience has not been sufficiently shown as of that time or approximately that time.

Mr. Long: I will go into that a little further.

Q. (By Mr. Long) How many times have you been on watch? How many trips have you made as an officer on watch on vessels navigating in these waters?

The Court: Prior to May 19, 1935?

Mr. Long: Well, both prior and after.

The Court: He has already said that he has had experience during the last two years, which is after. It is of interest especially in this connection to see what his experience has been before also.

Mr. Long: Very well.

Q. (By Mr. Long) What has been your experience on vessels navigating in these waters before May 19, 1935?

A. Well, before that May 19, 1935, I had never been in the capacity as an officer there, but two or three times—up to that time—but I had been there as a quartermaster approximately twenty times.

Q. (By Mr. Long) Had you an opportunity, both before and after the stranding of the "Denali" to observe—

Mr. Ryan: (Interposing) May I have that last [2186] answer read? I didn't quite get it all.

(Testimony of Erwin P. Larson.)

(Answer read as follows:

“Well, before that May 19, 1935, I had never been in the capacity as an officer there but two or three times—up to that time—but I had been there as a quartermaster approximately twenty times”.)

Mr. Ryan: The answer is not clear to my mind, nor the question. Dixon’s Entrance is a tremendous body of water. Is he being asked about going through Caamano Passage or not?

The Court: The inquiry will have to wait the opportunity of cross examination. Proceed.

Q. (By Mr. Long) As a result of your experience, Mr. Larson, both before and after the stranding, have you had occasion or opportunity to observe the actual tides——

Mr. Summers: (Interposing) Just a minute.

Mr. Long: Wait until I finish my question.

Mr. Summers: Well, I want to make an objection when you are thorough with your question. I was talking to one of the officers and I would like to have the question so far propounded read.

Mr. Long: Read the question.

(Question read as follows:

“As a result of your experience, Mr. Larson, both before and after the stranding, have you had occasion or opportunity to observe the actual tides——”)

(Testimony of Erwin P. Larson.)

Q. (By Mr. Long) The actual tides in Dixon's Entrance, and the effect of the tides upon vessels navigating those waters?

Mr. Ryan: Now, Your Honor—— [2187]

Q. (Continuing) Including around Triple Island Light and north of that and south of that, and the whole area of that vicinity.

The Court: Now wait until counsel makes their objection.

Mr. Summers: I have no objection if he just answers that by yes or no.

A. Yes.

Mr. Long: That is just what I want him to say.

Q. (By Mr. Long) What has been your experience—just tell us as to your observation with relation to the regularity or irregularity of the tides in that area.

Mr. Summers: I object to that, if Your Honor please, because in discussing the admissibility of this counsel has said that the tides have not changed. If they have not changed, then this question seeks to do one of two things, either to prove that the tides are the same as shown on the chart, and the currents are the same, in which event it is not necessary and it is not material, or that they are different, and in that event it is an attempt to impeach the government charts and that is, of course, inadmissible.

The Court: Objection overruled.

Mr. Summers: Exception.

The Court: Exception allowed.

(Testimony of Erwin P. Larson.)

Q. (By Mr. Long) Just go ahead.

Mr. Ryan: May I object on the further ground that similarity of conditions is not shown as to those under which the "Denali" was navigating that night; that in fact his observations were under dissimilar conditions, [2188] and also that it is too far afield. The whole of Dixon's Entrance is involved. Counsel does not limit it to Caamano Passage or to any place where the "Denali" was navigating.

The Court: Objection overruled.

Q. (By Mr. Long) Just go ahead and tell us, Mr. Larson. What has been your experience?

A. My experience in Dixon's Entrance and Hecate Straits so far as the tide and current goes, I would not depend on no tide table.

Q. (By Mr. Long) Have you observed—

Mr. Ryan: (Interposing) May I move to strike that out on the ground that it is an attempt to impeach the accuracy, or an attempt by oral testimony, not shown to be of any substantial weight, as compared with the standard use by the Government Hydrographers in preparing these charts and in issuing these instructions—it is an attempt to show that the United States Government's instructions to mariners, in the form of government charts are wrong, and this is not a proper way for the Court to take up this matter, it having been already decided by the proper department of the government—by the Hydrographic Department of the Navy and by the Coast and Geodetic Survey.

(Testimony of Erwin P. Larson.)

The Court: The motion will be overruled and denied.

Mr. Ryan: Exception.

Mr. Summers: To avoid repetition may it be understood that our objection is reserved to all similar questions?

The Court: Yes. [2189]

Mr. Long: What was that last question and answer? (Question and answer read as follows:

“Q. Just go ahead and tell us, Mr. Larson. What has been your experience?

A. My experience in Dixon’s Entrance and Hecate Straits so far as the tide and current goes, I would not depend on no tide table.”.)

Q. (By Mr. Long) Have you observed in connection with navigating these waters the irregularity of the tide as compared with the actual tide tables?

A. I have.

Mr. Ryan: I object to that on the ground that it is leading.

The Court: Objection sustained.

Q. (By Mr. Long) What comparison have you made between actual observations and the effect of the tide on your vessels with the tide tables up there and current tables?

A. Well, it is very seldom that I could see any ship could make a course good after they enter Dixon’s Entrance.

Mr. Ryan: Would you read the answer?

(Answer read)

(Testimony of Erwin P. Larson.)

Q. (By Mr. Long) Explain that a little further, Mr. Larson, if you will, please.

A. Well, you always have to either pull them to the left or to the right even if you allow them a certain amount of tide and you figure there would be so much tide there, and so far as I seen pretty near all the time I got fooled on the tide.

Q. Does your experience indicate to you that the tide is [2190] predictable as to force and direction?

A. No.

Mr. Ryan: I want to object to that on the ground that it is leading, and I move to strike that out.

The Court: Objection overruled. Motion denied.

Mr. Ryan: Exception.

Q. Now, Mr. Larson, what is your opinion as a licensed officer as to whether or not at the time that the "Denali" sailed from Seattle she was properly supplied and equipped with the necessary navigation instruments, charts, and other publications, notices to mariners and data ordinarily furnished on ships of this kind for such a voyage?

Mr. Ryan: Just a minute. I think the witness' knowledge and recollection have already been inquired about specifically, as to just what he put on board, and what was on board, and we have the deck equipment book here. Now, to ask the witness to draw some inference or conclusion of his own as to what is necessary or not, it seems to me is calling for a decision on a matter which has to be determined by the Court and not by the witness. This

(Testimony of Erwin P. Larson.)

is a conclusion or inference from facts which are already before the Court in the form of specific questions and answers.

The Court: The Court has heard that specific question asked of some witness today, but he is in doubt as to whether it was asked of this particular witness. The Court is accordingly going to let this witness answer that question at this time.

Mr. Ryan: Exception. [2191]

The Court: Exception allowed.

Mr. Long: Read the question.

(Question read as follows:

“Now, Mr. Larson, what is your opinion as a licensed officer as to whether or not at the time that the ‘Denali’ sailed from Seattle she was properly supplied and equipped with the necessary navigation instruments, charts, and other publications, notices to mariners and data ordinarily furnished on ships of this kind for such a voyage?”)

A. Absolutely she was seaworthy.

The Court: Are you asking him for a conclusion as to seaworthiness?

Mr. Long: For both, Your Honor. That would be my next question.

The Court: Read the question.

(Question read again)

Mr. Ryan: That is further objected to, in addition to the other grounds that I specified, on this ground, that the nature and extent of the examination made by this witness has already been brought

(Testimony of Erwin P. Larson.)

out in his testimony, and it has been shown that that was not sufficient to warrant his being asked a question in such a general form. He made no answer of such a substantial nature or extent that would qualify him to give a general statement that the ship was seaworthy. No such examination of such a substantial nature or extent was made by counsel of this witness.

Mr. Long: I am referring, of course, with reference to things under his jurisdiction.

The Court: Objection overruled. [2192]

Mr. Ryan: Exception.

The Court: Exception allowed.

Q. (By Mr. Long) Just one other question, Your Honor, that I overlooked. Where is the log book?

The Court: Here it is (handing book to counsel).

Mr. Long: Excuse me. I didn't see it.

Q. (By Mr. Long) Calling your attention to the pilot house log book, Mr. Larson, on page—or under date of May 13th, the writing in red letters, is this your writing (indicating), did you make that entry?

A. I did, yes, sir.

Q. Would you read that entry, please?

A. "Steering gear, whistle, telegraph"—

The Court: Do not read it out loud. Just read it to yourself.

(Testimony of Erwin P. Larson.)

Q. (By Mr. Long) I just want you to read it to yourself. I don't know whether you can read it or not.

A. Yes, I can.

Q. Is that your writing?

A. Yes, sir.

Q. Your handwriting?

A. Yes, sir.

Mr. Long: I want the reference to particularly and properly show in the record, Your Honor. May I be permitted to read it so that I can show it in the record? There is no line on there or any manner in which I can do that.

The Court: You may state what he refers to, if you can do so. [2193]

Mr. Long: The witness refers to the red printing on the right hand side of the page, dated May 13, 1935, and directly above the ruled lines on that side of the page.

The Court: Very well. [2194]

Mr. Summers: If Your Honor please, before cross examination is started I wish to make a motion. The log book in evidence in this case——

The Court: It has not been formally admitted, Mr. Summers.

Mr. Summers. It is Claimants' Exhibit A-4 for Identification.

Mr. Long: I now offer the log book, Your Honor. I thought it had been admitted. If I am mistaken, then I offer it in evidence at this time,

(Testimony of Erwin P. Larson.)

the pilot house log book marked Claimants' Exhibit A-4.

The Court: Is there any objection to its admission?

Mr. Summers: No, Your Honor.

The Court: Claimants' Exhibit A-4 is now admitted.

(Log book received in evidence Claimants' Exhibit A-4.)

And in that connection, may I remind counsel that there are only two of Claimants' identified exhibits which have been admitted, the two being Claimants' Exhibit A-2 and Claimants' Exhibit A-4. No other of the Claimants' identified exhibits have been admitted.

Mr. Ryan: I thought, Your Honor, that we would introduce our exhibits as part of our case.

The Court: Very well.

Mr. Long: At this time, if Your Honor please, I wish to offer in evidence Claimants' Exhibit A-10, being the chart referred to by this witness and by other witnesses many times.

Mr. Summers: I think that should be objected to at this time. [2195]

Mr. Ryan: Claimants' Exhibit A-6 was admitted in evidence, according to our notes, Your Honor. That exhibit consists of the depositions of Commander Richards, of the United States Coast Guard, and other officers and members of crew of the Cutter "Cyane", and also Commander Dirks. Also,

(Testimony of Erwin P. Larson.)

there were some photographs offered in evidence, and all the exhibits annexed to those various depositions of the officers and crew of the Coast Guard Cutter "Cyane".

Mr. Long: My recollection is that it was admitted that they would be considered part of the Claimants' case.

Mr. Ryan: But they are in evidence.

The Court: The whole deposition is in evidence, is that what you claim?

Mr. Ryan: Yes, Your Honor.

The Court: The depositions have not yet been read.

Mr. Ryan: Your Honor, I am prepared to read them now, or at any time, but that is the reason I brought this up. That occurred at an early stage of this trial.

The Court: Is that subject to any objections noted in the depositions?

Mr. Ryan: It was agreed that the objections to the questions that were asked at the time of the taking of the depositions would be considered, that they could be renewed. They have not seen fit to make any of those objections yet.

Mr. Bogle: You haven't read the depositions yet.

Mr. Ryan: I do not want to take the time to read the depositions now, but I am prepared to read them now, [2196] and I ask that I be allowed to if there is any question at all about them being in evidence.

(Testimony of Erwin P. Larson.)

The Court: Subject to the objections noted in the transcript of the depositions.

Mr. Ryan: As stated at the time.

The Court: As stated in the transcript.

Mr. Long: Let me make this suggestion, please; I do not recall the number of the exhibit, but either on the first or second day of this trial this matter was gone into carefully, and the Court made its order as to the extent of the admission of the exhibits attached to the depositions, and I think that order should stand. After all, this is the Petitioner's case, and we should be permitted to try it ourselves.

The Court: I do not have the notation that the deposition itself was admitted, but whatever order was made will stand.

Mr. Ryan: Our notes are very clear on that. If we had not so understood we would have made other arrangements during the trial, if there was any doubt about the depositions being admitted in evidence, with the exhibits.

Mr. Long: The record is very clear on that, Your Honor. At this time, however, I wish to offer in evidence the chart referred to by this and other witnesses, which is marked Claimants' Exhibit A-10. I do not care what exhibit number it may take.

Mr. Summers: It seems to me it should be objected to unless it is shown by the evidence in this case that it has something to do with the navigation of the vessel, [2197] and does not pertain

(Testimony of Erwin P. Larson.)

solely to the personal interests of the witness Larson.

The Court: The objections are overruled, and Claimants' Exhibit A-10 is now admitted.

Mr. Ryan: May I ask that it be given a Petitioner's number, as part of the Petitioner's case?

Mr. Long: I have no objection to that if it suits the Clerk of the Court. For the sake of the record, Your Honor, I might state that we have been referring to it all the way through the record as Claimants' Exhibit A-10.

Mr. Ryan: I beg your pardon. I think perhaps, on the statement on the record that it is being offered in evidence by the Petitioner that it should still be called Claimants' Exhibit A-10, because numerous witnesses have referred to it as Claimants' Exhibit A-10.

The Court: The record will show that it will be admitted, and the ruling of the Court thereon. It is admitted.

(Chart received in evidence Petitioner's Exhibit A-10.)

Mr. Pellegrini: With reference to Claimants' Exhibit A-6, the record at page 636 is as follows:

“The Court: Claimants' Exhibit A-1 is already in the record. It will be Claimants' Exhibit A-6. It has been offered. Is there any objection to it?”

Mr. Long: No, not insofar as—well, we object to the deposition as part of our case, of

(Testimony of Erwin P. Larson.)

course, but not as part of the Claimants' case.

The Court: He is offering it as part of his case [2198] at this time.

Mr. Long: We will not object to the offer, except by reserving, Your Honor, the objections made in the depositions to the individual questions.

The Court: Subject to those objections it will be admitted."

Mr. Long: One of those objections was that it be offered as part of their case, and not part of our case.

The Court: They at that time did offer it; you did not offer it, did you?

Mr. Long: No, we did not offer it. I wanted to use one picture, an enlargement, that is all.

The Court: The record will stand, that Claimants' Exhibit A-6 has been previously admitted, subject to the objections therein stated, subject to preserving the objections therein noted, in the depositions, which may be acted upon later as occasion may require.

Mr. Summers: Preliminary to cross examination, Your Honor, the Claimants make this motion:

Claimants move to strike from the record all testimony of the Second Officer Larson for Petitioner to the effect that at the time of the stranding, or immediately thereafter, the visibility was in excess of two miles, to-wit, fourteen to fourteen and

(Testimony of Erwin P. Larson.)

one-half miles, for unlighted sizable objects, because such testimony is an attempt on the part of Petitioner to impeach Petitioner's log book which records that the visibility at that time was hazy, and it is contradictory of and inconsistent with the Petitioner's answer to Claimants' interrogatories on the subject of visi- [2199] bility at the time of the stranding, to the effect that the range of visibility was from one to two miles for sizable unlighted objects, it being Claimants' contention that Petitioner may not either impeach or contradict the entries in the vessel's log book or Petitioner's answer to interrogatories.

The interrogatory to which Claimants refer in relation to the motion is Petitioner's answer to Interrogatory No. 21, which reads thus: "At the time the steamship 'Denali' stranded * * * what was the condition of visibility:"

And as to sub-division (1) "As to degree?" And the answer is "Dark, shortly before daybreak." Then sub-division (2) "As to range?" And the answer is "Estimated from one to two miles as to unlighted sizable objects."

Then as to the log book, the log book as of the time of stranding says "Hazy", that being Claimants' Exhibit A-4.

The witness on the stand has testified that immediately after the stranding he went up to take a bearing, at the instructions of the master, and at the time of taking the bearing observed 14½ miles

(Testimony of Erwin P. Larson.)

up in the vicinity of Tree Point Light these mountains.

It seems to me that that testimony, and the testimony of a similar character should be stricken, in view of its impeaching character with respect both to the log and the answer to the interrogatory.

The Court: Motion denied.

Mr. Summers: Exception. [2200]

The Court: Exception allowed.

Cross Examination.

By Mr. Ryan:

Q. At the time that you laid down the track of the "Denali", or the lines that you put on Claimants' Exhibit A-10, this chart No. 8102, what course was the "Denali" on?

A. What course was she on?—The 17th in the morning—we left the 16th, and I can't remember what course she was on.

Q. You can refresh your memory from the log book, if you wish (showing).

A. Yes; I wish you would let me. On the 17th—well, West by North $\frac{5}{8}$ North, by the standard.

Q. And by the steering compass?

A. West Northwest.

Q. What time was that?

A. Well, in the forenoon of May 17th.

Q. What time in the forenoon of May 17th did you lay down those lines on that chart?

(Testimony of Erwin P. Larson.)

A. Between 9:00 and 10:00, approximately, sometime around there.

Q. You were working in the chart house of the "Denali" at that time?

A. Yes.

Q. Where was the ship at that time?

A. What time?

Q. The time you laid down that track or lines on that chart, Claimants' Exhibit A-10.

A. Some place around the west coast of Vancouver Island. [2201]

Q. Between Solando Point and Cape Scott?

A. No. That is in the evening, P. M., here (indicating).

Q. Tell me where the ship was, between what points, at the time you laid down that track, the lines, on Claimants' Exhibit A-10.

A. To the west of Estavan Point Light.

Q. South of it or north of it?

A. West.

Q. South of west or north of west?

A. Well, she was west of the line. That means she was to the westward of Estavan Light.

Q. What chart was being used for navigating the "Denali" at that time?

A. Well, the captain had the chart out, Cape Flattery to Dixon's Entrance, and some other charts taking in Vancouver Island; some Canadian charts, I think it was. I can't remember the name or number of them.

(Testimony of Erwin P. Larson.)

Q. Can you give me the number of any one of the charts that was being used to navigate the "Denali" on the morning of May 17th, 1935, when you laid out this track on this chart, Claimants' Exhibit A-10?

A. You are pointing on that chart—I never laid any tracks on that chart.

Q. I am talking about Claimants' Exhibit A-10.

A. I don't know what Exhibit A-10 is. You are pointing at that chart.

Q. You laid out some lines on this chart, Claimants' Exhibit A-10, did you not?

A. Yes.

Q. Now, will you please answer the question?

[2202]

A. Yes. What was the question? (Question read as follows:

"Q. Can you give me the number of any one of the charts that was being used to navigate the 'Denali' on the morning of May 17th, 1935, when you laid out this track on this chart, Claimants' Exhibit A-10?")

The Witness: Well, it is awful hard to remember the numbers of the charts. You couldn't memorize the different numbers on the American and Canadian charts. It is impossible to memorize them and remember them. On some of the ships like the "Denali" they have up to 300 charts, and how could a man memorize the numbers of them? Nobody could.

(Testimony of Erwin P. Larson.)

Q. (By Mr. Ryan) Please listen to the question and answer it, if you can, and if you cannot, say that you do not know or that you do not remember, whatever the truth is. Read the question. (Question re-read as follows:

“Q. Can you give me the number of any one of the charts that was being used to navigate the ‘Denali’ on the morning of May 17th, 1935, when you laid out this track on this chart, Claimants’ Exhibit A-10?”)

A. No, sir; I could not.

Q. Can you give me the title of any one of the charts?

A. Yes, I can.

Q. That was being used to navigate the “Denali” on the morning of May 17, 1935, when you laid this track down on this chart, Claimants’ Exhibit A-10?

A. Yes, I can.

The Court: All right, proceed. [2203]

The Witness: Cape Flattery to Dixon’s Entrance was one of them. That is the only name that I can remember. I do not remember the names of the Canadian charts. I can identify them if you bring around some Canadian charts taking in Vancouver Island, I could identify them. I couldn’t tell you as to the numbers or the names of them.

The Court: Well, just answer the question.

Q. (By Mr. Ryan) Now, the “Denali” proceeded from there on her voyage up to Metlakatla,

(Testimony of Erwin P. Larson.)

and can you tell me the number of any chart used after that in navigating the "Denali"?

The Court: If you can say so, you may answer, and if you cannot, then you can also say so.

The Witness: Yes. I cannot remember the number for the north part of Vancouver Island. I cannot remember that.

The Court: Do you remember the name of it, how it was designated?

The Witness: The west part of Vancouver Island, I think.

Q. (By Mr. Ryan) Now, how many tracks did you lay down on that chart, Claimants' Exhibit A-10, on the morning of May 17th?

A. Do you mean different courses?

Q. Well, general tracks for the vessel, yes.

A. I don't know. It is hard to remember. Maybe two, maybe three.

Q. You mean changes of course of the vessel?

A. Yes.

Q. I do not mean that. You laid down a course on the [2204] morning of May 17th for the "Denali", or for a ship to follow going northward, did you not?

A. No; I laid it down for my own information, to get the distances between the places. I never laid down the track for the ship to travel.

Q. You laid down the track of a vessel on a chart, that is, a magnetic course, did you not?

A. No; I never did.

(Testimony of Erwin P. Larson.)

Q. Well, you laid down a line on a chart, which is the same way that a magnetic course or line would be laid down by a navigating officer of a ship, did you not, on the morning of May 17th, on this chart, Claimants' Exhibit A-10?

A. I don't quite agree with you there. I laid down the line, or the course or the track for me to measure the distances on. I never laid down a track for any ship to travel on.

Q. What course did you first lay down, starting at the bottom of the chart?

A. I don't know.

Q. Referring to Claimants' Exhibit A-10.

A. Oh, I couldn't remember.

Q. I will show you the chart and ask you to tell me.

A. Somewhere around northwest.

Q. Well, give it to me exactly the way it is laid down there—don't spar about it.

A. Northwest $\frac{1}{4}$ North.

Q. Why did you happen to lay down Northwest $\frac{1}{4}$ North at that time?

A. Well, Northwest $\frac{1}{4}$ North, if you lay it out on a chart, it is the course that is steered mostly going up Hecate [2205] Strait from Bonilla Island. It is a parallel course running along the shore, if you are five miles off or ten miles. If you want to you can lay the course off from Bonilla Island up to McCullough Rocks, and it is approximately a Northwest course. That is why I laid it off.

(Testimony of Erwin P. Larson.)

Q. That is the first course you laid down?

A. Yes.

Q. Now, that is the chart No. 8102 that was supplied to the "Denali" just before she sailed on this voyage, is it not?

A. Yes.

Q. It is the only one they had on that trip, is it not?

A. Oh, no.

Q. No. 8102?

A. Oh, no.

Q. The only up-to-date one they had?

A. Up-to-date?

Q. Yes; the only one that was corrected up to date, according to this list?

A. No, sir. She had that chart some years before—the year before—I don't know what it was.

Q. Do you think this chart was issued the year before the stranding?

A. I don't know when it was issued.

Q. You do not know? Well, I will call your attention to the date in rubber stamp on the bottom of it; what is that date?

A. Well, it is corrected up to April 15, yes.

Q. Read the date.

A. April 15, 1935, and it was printed in 1935.

[2206]

Q. Yes. Then it is the very latest chart, No. 8102, issued just before the "Denali" sailed?

A. Yes.

(Testimony of Erwin P. Larson.)

Q. Isn't it?

A. Of course.

Q. It is the only one the "Denali" had on board that was of that late issue?

A. Yes. She had the chart the year before.

Q. What?

A. She had the same chart the year before.

Q. But the very latest chart that the ship had was the one that you were using for practicing on, is that it?

A. I was not practicing; I was getting some information out of it, that is all.

Q. Why did you lay out that course, running up past Triple Island, and leading to the westward, past McCullough Rocks, up to Metlakatla, instead of through Caamano Passage, to the east of Zayas Island?

A. I just told you I wanted the distance between the different points. I told you that twice already.

Q. Is that your only explanation of that?

A. Absolutely.

Q. You didn't know at that time that the "Denali" was going up through Caamano Passage, did you?

A. The 17th?

Q. When you laid down this track here showing a vessel going not through Caamano Passage, but shooting over to the westward past McCullough Rocks, and up to Metlakatla?

(Testimony of Erwin P. Larson.)

A. I never asked anybody at that time.

Q. You didn't know at that time, did you, that the ship [2207] was going through Caamano Passage?

A. No; I don't think I did.

Q. Now, a brand new set of charts was ordered for this ship before she sailed, wasn't it?

A. Yes.

Q. And you were the one that ordered them?

A. Yes.

Q. And you didn't know what way she was going, whether she was going inside or through Caamano Passage, at the time you ordered them, did you?

A. I didn't know—What was the question?

The Court: At the time of purchasing the maps you didn't know whether she was going through Caamano Passage or to the westward of Caamano Passage?

The Witness: No, sir; I did not.

Q. (By Mr. Ryan) Well, you would have used a different set of charts if you went through the Inside Passage, wouldn't you?

A. Well, we had all them charts on board.

Q. Please answer the question.

Mr. Long: I think that is a complete answer, Your Honor.

The Court: No; the objection is overruled.

(Testimony of Erwin P. Larson.)

The Witness: What was the question? (Question read as follows:

“Well, you would have used a different set of charts if you went through the Inside Passage, wouldn't you?”)

The Witness: Why, certainly.

Q. (By Mr. Ryan) Isn't this set of charts that you ordered [2208] before the “Denali” sailed a set of charts going up through the Inside Passage to Alaska? I show you the list that was produced by counsel for the Alaska Steamship Company as being the charts requisitioned in May, 1935.

A. What was the question? (Question read.)

Mr. Bogle: May I see that?

The Witness: The Inside?—

Q. (By Mr. Ryan) Will you answer that yes or no, please?

A. No.

Q. Explain your answer.

A. This requisition that you have here is some for the Inside and some for the Outside; Cape Flattery to Dixon Entrance is outside, then there are some inside—Dixon Entrance to Chatham Straits is outside, that chart. It is a mixed proposition, the whole thing. That is both inside and outside.

Q. There is no chart No. 2828 on that list, is there?

A. I don't think I ordered it. We had one aboard already. No, there is not.

(Testimony of Erwin P. Larson.)

Q. And there is no chart No. 1584 on that list, is there, H.O. No. 1584?

A. What is No. 1584—I don't know what it is.

Q. You are not familiar with Hydrographic Office Chart No. 1584, are you?

A. I might be if I could see it, but like I told you a while ago, how can a man remember two or three hundred charts and memorize them? Show me the chart and I might remember it.

Q. Isn't it a little strange to you that you ordered No. 8102 in May, 1935, when the fact is that same chart had been [2209] ordered and supplied to the "Denali" in 1934, in the very last requisition preceding that?

A. Well, you have your No. 8102——

Q. (Interposing) Read the question. (Last question read.)

Mr. Long: I object to the form of the question, Your Honor. If they want to ask why he ordered it that is one thing, but when counsel asks him if it is a little strange, then I object to the form of the question.

The Court: I think the witness knows the import of it?

Mr. Ryan: I do not think there is anything strange about that.

Q. (By Mr. Ryan) At any rate, in May, 1935, you ordered a new chart No. 8102, notwithstanding that same chart had just been supplied to that ship on the last requisition, isn't that right—in 1934?

(Testimony of Erwin P. Larson.)

A. Show me the chart. That was a new chart in 1935, and that is the reason I ordered it. If I had one for 1934 and there was a new one in 1935, that is the reason I ordered it. [2210]

Q. I see. That is the reason you give, is it?

A. Well, I suppose so. You are telling me—you show me the year that it was printed and say that it was printed in 1935, well, I believe, of course, it was a new chart.

Q. All right. Now, you have no record anywhere of Chart 2828 having been on board the “Denali” on this voyage that she made in May, 1935?

A. No, sir, I have no record of 2828. It was on the ship’s records and on the chart list, and they went down with the Steamship “Denali”.

Q. Can you give the number of any chart that was used in navigating the “Denali” on this voyage from, say, the time that she got outside of the Straits of Juan de Fuca, here at Cape Flattery, on up to the time that she stranded?

A. Well, like I told you, it is awfully hard to remember numbers of charts. Why I remember 2828 is because everybody has been talking about 2828, and I will never forget 2828 as long as I am alive.

Q. And you have been sitting here at this trial all through it, practically, haven’t you, and you have heard——

A. (Interposing) Well, I am bound to remember 2828.

(Testimony of Erwin P. Larson.)

Q. And you have heard it mentioned here during this trial, haven't you, and that is what fixes it in your mind, doesn't it?

A. Not exactly. I will recognize the chart whenever I see it, but the number—I will never forget the number, of course—because it is all 2828.

Q. Now, what was this track supposed to represent that you [2211] laid down on Claimants' Exhibit A-10?

A. On Claimants' Exhibit A-10?

Q. Yes.

A. Which chart is that?

Q. That is this chart. This is the chart that you made the pencil lines on on May 17th. What were you trying to represent there by those lines?

The Court: I am going to let him answer the question, but I am going to ask counsel and request that they finish the cross examination on this subject at one time and not to come back to it again.

Mr. Ryan: I will, Your Honor.

A. I told you, Mr. Ryan, that I laid them lines out to get the distances between the different points, and I always mark them down in a small book that I carry.

Q. Well, you get distances between different points by means of dividers, do you not?

A. Yes, but on a distance like that you cannot go with a pair of dividers and start to measure. You have got to have some lines to follow, don't you?

(Testimony of Erwin P. Larson.)

Q. You were laying down there a track that a ship would be going northward past Triple Island and turning to the westward past McCullough Rocks and going up to Metlakatla, isn't that so?

A. Absolutely not.

Q. That is what the lines that you have drawn there show, do they not?

A. I don't care what they show. You can take it any old way you want to. I am telling you that I laid down them lines to get the distances between the points. [2212]

Q. You just laid down the one set of lines and got the distances, and that is all you did about it?

A. One set of lines? What do you mean?

Q. This line here that reads Northwest $\frac{1}{4}$ North (indicating on Claimants' Exhibit A-10).

A. Well, that is how you get it.

Q. And runs up here Northwest $\frac{1}{4}$ West, and then out past Barren Island and up to Metlakatla, is that right?

A. That is how you get your distances.

Q. And that is what you did. You just laid down that one set of lines like that, didn't you?

A. Yes, I did. Yes, I did.

Q. Now, I will ask you if there is not an erasure on that chart—

A. (Interposing) Sure. There are lots of them.

Q. (Continuing) Showing the course or track that you laid down there, or somebody laid down there was Northwest—

(Testimony of Erwin P. Larson.)

A. (Interposing) I did not——

Q. (Interposing) Just wait just a minute.
Northwest $\frac{1}{4}$ West.

A. I told you awhile ago that I had two or three tracks there.

Q. Wait a minute. Isn't it a fact that there is a track laid down there in pencil——

A. (Interposing) Sure.

Q. Please don't interrupt.

A. Absolutely.

Q. Now, listen to this question.

A. All right.

Q. Isn't it a fact that there was a track laid down on this [2213] chart in pencil North by West—Northwest, rather—strike that, please—isn't it a fact that there was a track laid down on this chart in pencil Northwest $\frac{1}{4}$ West running from the bottom of the chart up?

A. Sure.

Q. Past until you get Triple Island abeam.

A. Yes, sir.

Q. Isn't that so?

A. Why, sure, it is.

Q. And wasn't that further—that first track also laid down so that there was a beam bearing on Triple Island running from that track northwest $\frac{1}{4}$ West?

A. No, siree.

Q. Well, look at it.

A. No, sir; absolutely not.

(Testimony of Erwin P. Larson.)

Q. Look at that erasure there.

A. Where do you get that beam bearing?

Q. That beam bearing from that erased line Northwest $\frac{1}{4}$ West.

A. Where do you get that?

Q. Well, you tell me whether it is there or not.

A. Absolutely not.

Q. Well, look and see.

A. You look yourself and see. Absolutely not.

Q. Did you make the erasures on this chart or not?

A. Sure, I did. I told you that before.

Q. You did?

A. Certainly, I did. What is the use of denying it? I did it.

Q. And you mean to tell me that there is no erased beam [2214] bearing from that line Northwest $\frac{1}{4}$ West of Triple Island Light?

A. No. That line has got no connection whatsoever with these lines. That line was made five minutes to twelve, before I went on watch.

Mr. Ryan: The witness is now pointing to the line up in Caamano Passage.

The Witness: Yes, sir.

Q. (By Mr. Ryan) I am not asking you about that line at all. I am asking you about this line here that is Northwest $\frac{1}{4}$ West that somebody has erased?

A. Yes, sir, I did it.

Q. You did it?

(Testimony of Erwin P. Larson.)

A. Yes, sir.

Q. All right. Now, when that line was there and before it was erased, there was another line——

A. (Interposing) Sure.

Q. (Continuing) Showing a beam bearing of Triple Island Light, wasn't there?

A. In order to get the distance of Triple Island Light when you are abeam you have got to have a bearing there.

Q. Yes, certainly——

A. (Interposing) Well, I did it.

Q. Well, somebody took a beam bearing of Triple Island Light, erased that bearing and erased that course on the bottom of the chart, didn't they, and put this on afterwards?

A. Well, how can you measure distances without you knowing that you are abeam? You have got to draw a line from the light to the abeam and out to the distance wherever [2215] you are.

Mr. Long: Now, I object to counsel's question as it does not assume anything but simply his own statement as to what somebody else did at some other time.

The Court: The objection is overruled. Counsel may ask the witness.

Mr. Long: He is saying, "Isn't it a fact that somebody else did"?

The Court: Objection overruled.

Mr. Long: And the witness says that he did.

Mr. Ryan: I ask the witness to examine the chart and notice the erasure there of the line that is run-

(Testimony of Erwin P. Larson.)

ning up there to the left, North by West $\frac{1}{4}$ West and of the beam—and the erasure of the beam bearing of Triple Island Light.

Q. (By Mr. Ryan) Now, you agree, don't you, that nobody would put down there a bearing of a light unless he had taken it?

A. Why, certainly they would.

Q. They would?

A. Why, certainly. Any man that goes to sea, who will try to navigate a ship, he will lay out his track, and you will always lay a line from his position in to a certain point. If you ever went to sea you would know that.

Q. You lay your bearing down before you take the bearing, is that it?

A. Yes, sir. Why, certainly you do.

Q. That is the only explanation you have for the fact that you have the bearing laid down on that line, isn't [2216] it—to Triple Island Light?

A. What?

Q. Well, what is your explanation of the fact—if you were merely looking for the distances between places, which you could take off with a pair of dividers, how does it happen that on this chart actual bearings are laid out of Triple Island Light by pencil lines?

A. Absolutely not.

Q. Well, I call your attention to the fact——

A. (Interposing) You don't need to call my attention to the fact——

(Testimony of Erwin P. Larson.)

Q. (Interposing) Wait a minute. I call your attention to the fact that on this new line that has been put on here since that one was erased you also have a bearing of Triple Island Light, isn't it so?

A. How would I know——

Q. (Interposing) Isn't that so?

A. Why, certainly.

Q. Now, don't argue with me.

A. Well, don't you argue with me. I did that work and I know what I did, and now you are arguing with me.

Mr. Long: May I ask that the witness explain it once for all, and then we will save a lot of time. He has answered at least part of this same thing six times, and I wish that he would be allowed to make a full explanation of it now.

The Court: Proceed.

Q. (By Mr. Ryan) Now, the fact is, Mr. Witness, is it not, that there was a pencil line on this chart running Northwest $\frac{1}{4}$ West—— [2217]

Mr. Long: (Interposing) I object to that as repetitious.

The Court: Objection sustained.

Mr. Ryan: Well, I haven't finished my question as yet, Your Honor.

The Court: Very well. Finish the question.

Q. (Mr. Ryan) Well, now—if the Court please, if the Court feels that the point has been covered I will go on to something else. I really thought that it had not been——

(Testimony of Erwin P. Larson.)

The Court: (Interposing) I do feel that way, Mr. Ryan, that it has been covered.

Mr. Ryan: All right.

Q. (By Mr. Ryan) Now, you testified on direct examination that you were—say about midnight on the evening of May 18, 1935—that is, on the night of May 18—May 19, 1935, Pilot Obert asked you about what distance abeam Triple Island Light would be passed, did he not?

A. Yes. He asked me, approximately.

Q. Yes.

A. I would not know exactly.

Q. Were you on watch at that time or not?

A. At what time?

Q. At the time that he asked you that question.

A. Well, I was on watch until 12:00 o'clock midnight.

Q. Please answer the question.

A. Yes, I was on watch.

Q. You were?

A. Yes, sir.

Q. And the captain was not on watch, was he?

[2218]

A. Why, the captain was relieved at ten minutes to 12:00 and he went down approximately at that time, and he was relieved by Captain Obert.

Q. Yes, but the captain was not on watch at the time that Pilot Obert asked you what distance Triple Island Light would be passed abeam, isn't that right?

(Testimony of Erwin P. Larson.)

A. No, the captain was not on watch then.

Q. The captain was not what?

A. No, the captain was not on watch then.

Q. The captain was not on watch then?

A. No, sir.

Q. In other words, Pilot Obert had relieved the master?

A. Yes, sir.

Q. And after the master had left the bridge——

A. (Interposing) Yes.

Q. (Continuing) ——Pilot Obert turned to you and said, “Where are we? When do we pass this light abeam that is ahead of us?” Now, he said——

Mr. Long: (Interposing) I want to object to that.

A. No, sir.

Q. (By Mr. Ryan) Or in substance that?

Mr. Long: I want to object to that on the ground——

The Court: Objection overruled.

Mr. Long: Exception.

The Court: Exception allowed.

Q. (By Mr. Ryan) Or in substance that?

A. No, siree.

Q. Well, what did he say to you?

A. Well, it is hard to remember the exact words that he said. [2219] He was not with the captain before I got in there——

Q. (By Mr. Ryan, interposing) I am not asking you before. I am asking you what did he say to you as far as you know after the master left the

(Testimony of Erwin P. Larson.)

bridge. Please answer the question and we will get along faster.

Mr. Long: Well, give him a chance to answer. Let him answer.

Q. (By Mr. Ryan) Please answer the question. What did he say to you?

A. He looked at these charts, and this chart was laying there alongside of the other charts there and he said, "Well, what time do you figure we will be up there?" "The captain told me that we will be there shortly after twelve". And I said, "Well, somewhere around there".

Q. And that is all that you said?

A. Yes, sir.

Q. Now, you said on direct examination that he further asked you how far Triple Island Light would be abeam when you passed her.

A. When he asked me what time it would be, it would be shortly after twelve.

Q. Will you please answer my question.

Mr. Long: Will you let him finish his answer?

Mr. Ryan: I want him to answer my question.

Q. (By Mr. Ryan) Well, you said on direct examination that he further asked you how far Triple Island Light would be abeam when you passed her, didn't you?

A. Maybe he did. It is hard to remember what he did say.

Q. Well, you swore on direct examination today that he did [2220] ask you that question.

(Testimony of Erwin P. Larson.)

A. Well, that is all right.

Q. Did he ask you that question—did he ask that question of you?

A. Yes, sir, he did.

Q. And what answer did you give to him?

A. About approximately ten and a half, or eleven, or eleven and a half miles abeam. That is hard for me to say exactly how far. That was about five minutes to twelve.

Q. You were going off watch, and you didn't even know what your position was, isn't that right, at that time?

A. Well, you could figure your approximate distance off by the time, and looking at the light. There is quite a bit of difference between ten miles and twelve miles, and I said that it was approximately somewhere between ten and a half or eleven and a half or twelve. I don't remember just exactly. I don't remember just exactly what I said.

Q. In other words, the captain walked off the bridge there and left you and Pilot Obert there?

A. And the third mate.

Q. And you didn't know how far you were away from this light, and the pilot didn't know, and then you went into the chart room and tried to figure it out, isn't that right?

A. Certainly not. That is not right.

Mr. Long: I object to this form of cross examination, counsel arguing with the witness. If they knew where they were they would not have to take

(Testimony of Erwin P. Larson.)

a bearing. That is so evident. And the witness said it was approximately. [2221]

The Witness: Certainly not—absolutely not.

Mr. Long: That is why they take bearings.

The Court: Proceed.

Q. Well, after the pilot asked you that question and you gave him that vague and indefinite answer—

Mr. Long: (Interposing) I object to that form of cross examination, if Your Honor please.

The Court: Proceed.

Q. (Continuing) You went into the chart room and tried to figure out on the chart how far you would be abeam of Triple Island Light when she came abeam, didn't you?

A. Absolutely not.

Q. Absolutely not?

A. No. I was in the chart room when I talked to him about the light.

Q. I see. After you gave him that answer then you went into the chart room?

A. I was in the chart room already when he asked me.

Q. I see. And then you gave him that answer that you said, is that right?

A. Yes; approximately.

Q. And then you went to the chart and you laid down this line up through Caamano Passage—that track—isn't that so?

(Testimony of Erwin P. Larson.)

A. It is approximately that distance.

Q. That is not an answer to my question. Read the question.

(Question read as follows:

“And then you went to the chart and you laid down this line up through Caamano Passage—that track—isn’t that so?”)

Q. (By Mr. Ryan) This track of the vessel, isn’t that so? [2222]

A. No, sir.

Q. Well, you testified on direct examination that that is just what you did. Do you want to change your testimony now?

A. I said that that was the line that I laid down, but that was not for the track of the vessel to travel on.

Q. But you laid the line down on the chart, didn’t you—

A. (Interposing) Why, sure.

Q. (Continuing) After Pilot Obert had asked you what distance abeam the ship was going to pass Triple Island Light?

A. Yes, I did.

Q. And you went to this chart and you laid it down on this chart?

A. Yes, sir. But there was another chart for him to use, with the tracks laid down already.

Q. I am referring when I say, “on this chart” to Claimants’ Exhibit A-10. Now, after Pilot Obert, the watch officer coming on—the senior watch offi-

(Testimony of Erwin P. Larson.)

cer coming on—asked you that question and you went to lay down this track of the vessel through Caamano Passage, why didn't you lay it down on this supposed chart 2828 that you have been talking about?

Mr. Long: Just a minute, now. This matter of a supposed chart—

A. (Interposing) I just told you that the captain had the course laid down on his chart for the ship to travel on. I had nothing to do with the navigation whatsoever of the Steamship "Denali" so far as laying the course or changing that course was concerned—so far as laying [2223] the course or changing that course goes.

Q. (By Mr. Ryan) Well, if you did not have anything to do—

Mr. Long: (Interposing) Just a minute. Will you just let me finish my objection?

Mr. Ryan: What is your objection?

Mr. Long: I ask that that portion of the question about a supposed chart be stricken. All the testimony is to the contrary.

The Court: Objection overruled.

Mr. Long: Exception.

The Court: Exception allowed.

Q. (By Mr. Ryan) Well, all you have to do to lay off a distance is to use a pair of dividers, isn't it?

A. I didn't hear the question.

(Testimony of Erwin P. Larson.)

Mr. Ryan: Read the question.

(Question read)

A. Not as far as I am concerned.

Q. Isn't that so?

A. No, sir.

Q. Well, if the track is laid down on the chart, all you have to do is to take a pair of dividers and set them down between the two points you want to know the distance between, and then hold the dividers over there along the scale on the side of the chart opposite that, isn't that so?

A. No.

Q. Is that a pair of dividers (indicating)?

A. Yes.

Q. And you mean to tell me that you cannot tell the distance [2224] between Triple Island Light and when the "Denali" was abeam on this—

A. (Interposing) Well, now, Mr. Ryan—

Q. (Interposing) Now, listen to the question. You cannot tell the distance between Triple Island Light and when the "Denali" was abeam Triple Island Light by merely using that pair of dividers?

A. What is your question again?

Q. I say that you cannot tell me the distance between the Triple Island Light and the "Denali", when abeam, by using that pair of compasses?

A. I don't understand your question.

Q. Well, does the track—isn't it passing Triple Island Light?

(Testimony of Erwin P. Larson.)

A. Yes, sir.

Q. Now, what is the distance from Triple Island Light to that track when the vessel that is on that track passes abeam?

A. That is not the way I measure the distance between two different points. Your dividers is too short to reach between the two different changes. Can't you see it yourself?

Q. Do you understand my question?

A. No, I don't.

Q. (Mr. Ryan) Read it again.

(Question read as follows:

“Now, what is the distance from Triple Island Light to that track when the vessel that is on that track passes abeam?”)

A. On which track?

Q. The track that is laid on that chart, Claimants' Exhibit [2225] A-10 that you are holding in your hand.

A. Will you point out the track?

Q. Can you not see the track? You laid it down yourself.

A. Well, there are two tracks.

Q. There are two tracks passing Triple Island Light?

A. Yes, sir. Which one do you want? There is one that I erased.

Q. That somebody erased.

A. I did.

(Testimony of Erwin P. Larson.)

Q. And it is an ordinary thing, when you are navigating a ship, to erase lines when you change your mind afterwards, or when you get a different bearing which throws you out, is it?

A. I don't know what you are talking about. That is not a navigating chart. That is what I had of my own for my own use.

Q. Now, lay out on that chart the distance from Triple Island Light to this course. There is only one course there Northwest $\frac{1}{4}$ North, that has not been erased. Lay out on that chart the distance from Triple Island Light to that course.

A. A little better than ten miles.

Q. You were able to do that merely with that pair of dividers, were you?

A. Yes, sir, but I could not——

Q. (Interposing) If you wanted the distance between any two points you could have done that with a pair of dividers, isn't that so?

Mr. Long: Let him finish his answer. If Your Honor please, I object to this form of examination. This man [2226] is screaming at the witness.

Mr. Ryan: I am not screaming at the witness, if Your Honor please.

The Court: Well, I do think that you were rather loud——

Mr. Ryan: (Interposing) Well, I am sorry.

Mr. Long: Do you wish to finish your answer, Mr. Larson?

The Witness: No, sir.

(Testimony of Erwin P. Larson.)

The Court: Proceed, ask another question.

Q. (By Mr. Ryan) Now, when Pilot Obert asked you at what distance abeam Triple Island Light would be when the "Denali" would pass it abeam in a few minutes, and you could not give him the answer to that question——

A. (Interposing) No.

Q. (Continuing) ——and you went into the chart room to try to figure it out on the chart, why didn't you lay down that line running up through Caamano Passage on the chart which was being used to navigate the ship so that you would get everything right?

(Witness does not answer)

Mr. Long: Just explain it, if you wish.

The Court: Explain it, if you want to.

The Witness: I have been explaining to you, Mr. Ryan, time after time, that them lines have nothing to do with the navigating of the ship.

Mr. Ryan: I move that that be stricken as not responsive.

The Court: It may be. Answer the question with respect to the chart that was used in navigating the [2227] ship.

A. What is the question?

Mr. Ryan: Read the question.

(Question read as follows:

"Now, when Pilot Obert asked you at what distance abeam Triple Island Light would be when the 'Denali' would pass it abeam in a few

(Testimony of Erwin P. Larson.)

minutes, and you could not give him the answer to that question, and you went into the chart room to try to figure it out on the chart, why didn't you lay down that line running up through Caamano Passage on the chart which was being used to navigate the ship so that you would get everything right?"')

A. I never had anything to do with navigating the ship. I didn't have no right to go in there and draw lines there for the ship to follow.

Q. (By Mr. Ryan) Well, if you did not——

The Court: (Interposing) I think that that has been stated by the witness a number of times.

Mr. Ryan: But that answer is not responsive, if the Court please.

The Court: Well, the Court thinks it is.

Mr. Ryan: All right.

Q. (By Mr. Ryan) Well, if there was no Chart 2828 in the chart room, that would be an explanation for your failure to use it, wouldn't it?

Mr. Long: That is objected to as arguing with the witness. Further, it is indefinite. What time are you referring to?

Q. (By Mr. Ryan) At that time after Captain Obert asked you that question and you were not able to answer it. [2228]

Mr. Long: There is no such testimony. We will show, and we have already shown by three or four witnesses that the chart was there.

(Testimony of Erwin P. Larson.)

The Court: Objection overruled. Answer the question.

A. What was the question?

(Question read as follows:

“Well, if there was no Chart 2828 in the chart room, that would be an explanation for your failure to use it, wouldn’t it, at that time after Captain Obert asked you that question and you were not able to answer it?”)

A. I don’t know what you are talking about.

Q. (By Mr. Ryan) You know the question that Pilot Obert asked you, don’t you?

A. How could I answer that question, when the ship was not abeam yet? I didn’t know how far she was going to be off. He would find it out himself when he got the light abeam.

Q. Weren’t you the officer that took the bow bearing of Triple Island Light?

A. Yes, sir.

Q. Why did you take the bow bearing of Triple Island Light?

A. Because the captain told me to.

Q. You didn’t know what the purpose of it was then, did you?

A. Why, certainly I did.

Q. What was the purpose?

A. Why, to get your distance off.

Q. I see. And then the officer coming on watch asks you the question and you say, “I don’t know.” Is that your answer, substantially? [2229]

(Testimony of Erwin P. Larson.)

A. Well, how do I know? No one can tell before you get the light abeam if you take a four point bearing for that purpose——

Mr. Long: (Interposing) I submit that counsel is attempting to mislead the witness.

Mr. Ryan: Now, wait a minute.

Mr. Long: Wait a minute yourself.

Mr. Ryan: Now, if the Court please, I object to that statement of counsel. I am not attempting to mislead the witness at all.

Mr. Long: Well, you know that that is not——

Mr. Ryan: (Interposing) I don't think that the witness has been quite frank, but I have not attempted to mislead the witness at all, and I ask that that remark of counsel be stricken.

The Court: Yes, it will be stricken.

Mr. Long: The four point bearing is taken to get the distance off of an object.

Mr. Ryan: Let the witness testify. Don't suggest anything to him.

Mr. Long: The testimony has been heard at least six or eight times to that effect. This witness has testified that he took the bow bearing by a four point bearing and was to complete that some time after 12:00 o'clock, after he got off his watch, and I submit, if Your Honor please——

Mr. Summers: (Interposing) Now, if Your Honor please, I would like to say——

The Court: (Interposing) Just a minute. There are two lawyers here. You may resume your seat,

(Testimony of Erwin P. Larson.)

Mr. [2230] Summers. Is there anything further you wish to ask him, Mr. Ryan?

Mr. Ryan: No.

The Court: The objection of counsel for the petitioner is overruled. And you may finish the answer, witness, if you haven't finished it. If it has not been finished the Court will allow the witness to do so. Now, Mr. Ryan, I wish you would close your cross examination on this point because it is highly repetitious.

Mr. Summers: May I interrupt to say——

The Court: (Interposing) I think counsel here can take care of matters.

Mr. Summers: I do not want to do any cross examining, or anything like that, but I want to register an objection on behalf of the claimants, and I request a ruling from Your Honor in regard to that objection. This claimant objects and asks for the privilege of registering an objection to the conduct of counsel for the petitioner in suggesting to petitioner's witnesses what the future testimony should be. In other words, it seems to me that the record in this case shows that time and time again Mr. Long has gotten on his feet and in the guise of an objection has suggested an explanatory answer to the witness being cross examined. I think that the claimants are entitled to protest that sort of conduct, and I think the Court should instruct counsel not to do that.

Mr. Long: I ask that those remarks of counsel be stricken from the record. I have at no time

(Testimony of Erwin P. Larson.)

gotten on my feet and suggested answers to the witness, and the [2231] record shows that, and I think that counsel's remarks should be stricken.

The Court: Neither one will be stricken. Let the record be as it has been made. The trouble is, of course, that there are too many assisting counsel. Let those who have been delegated to examine and cross examine this witness attend to the record and proceedings with respect to that, and the others will be given an opportunity to consult with them at the proper time in a reasonable manner. Proceed with the examination, and proceed with it expeditiously, if you will.

Mr. Ryan: What was the last question and answer?

(Question and answer read as follows:

“Q. And then the officer coming on watch asks you the question, and you say, ‘I don't know’. Is that your answer, substantially?

A. Well, how do I know? No one can tell before you get the light abeam if you take a four point bearing for that purpose——”)

Q. (By Mr. Ryan) Now, Mr. Witness, is not your answer that you have just given incorrect in this, that if the track of your vessel is laid down by a line on the chart, and if you have taken a bow bearing of a light, all you have to do, in order to ascertain the distance abeam, if that track was correct, is merely to draw a line at right angles to that light—at right angles to that track to that light?

(Testimony of Erwin P. Larson.)

A. Never. Absolutely not. How could you determine it on a log of a ship, or the set of the tide or current? No man could navigate the way you are suggesting to [2232] navigate. No man could.

Q. You do not think that this line that is drawn on this chart here by somebody——

Mr. Long: (Interposing) On Claimants' Exhibit A-10.

The Witness: I did that.

Q. (By Mr. Ryan) ——from this course to Triple Island Light gives you the distance abeam while she is on that course?

A. Well, suppose she is on that track. Yes.

Q. Answer the question.

A. What is the question?

(Question read as follows:

“You do not think that this line that is drawn on this chart here by somebody from this course to Triple Island Light gives you the distance abeam while she is on that course?”)

A. Suppose she is on that track, yes.

Q. Your answer is “Yes” to that, isn't it—if she is on that track this line shows her distance abeam, doesn't it?

A. Which line?

Q. This line at right angles to that course running to that light (indicating on Claimants' Exhibit A-10).

(Testimony of Erwin P. Larson.)

A. That all depends where you measure from. If you measure from there to there (indicating on Claimants' Exhibit A-10).

Q. So if you were asked a question by a watch officer, "What distance abeam will we pass this light that we are coming to?" And if you had already laid down on the [2233] chart the bow bearing, and if the track of the vessel were laid right on there, and the ship were continuing on that track, all you would have to do would be to take and draw a line at right angles to that track running through the light, isn't that right?

A. No, sir.

Q. And you could give him the answer?

A. No, sir.

Q. No?

A. No, sir. The ship will never run like a street car on two street car tracks. It never has happened in history.

Q. In other words, you would not lay down on a chart a bearing until after you had taken it, isn't that right?

A. Well, that thing——

Q. (Interposing) Will you answer that question now so that we can make some speed here?

A. Well, I cannot answer that. I don't know what you are talking about.

Q. Don't go off to something else. If you don't understand my question, say so.

A. I don't know what you mean.

(Testimony of Erwin P. Larson.)

Mr. Ryan: Read the question.

(Question read as follows:

“In other words, you would not lay down on a chart a bearing until after you had taken it, isn't that right?”)

A. What is that?

Q. (By Mr. Ryan) You would not lay the bearing down on a chart and in pencil draw a line from it up to the track until after you had taken the bearing, would you? [2234]

A. But that line is not a bearing. That is the distance off from the light to the track. That is not a bearing.

Q. You don't think that these lines that are drawn on this chart, Claimants' Exhibit A-10 indicate a bearing?

A. Certainly not.

Q. Well, wouldn't it be the same kind of a line that you would draw if you were drawing a bearing of the light?

A. No, sir.

Q. What kind of a line would you draw if you took a bearing of a light, and it was abeam, and you wanted to lay it down on the chart?

A. After I got it abeam I would have my four point bearing—when I got her abeam I would have my time and my log run and I would not have to lay down a line to know the distance of it. I would get it from the time and the log run.

(Testimony of Erwin P. Larson.)

Q. Do you mean to say, as a licensed officer on a ship, that when you took a beam bearing of a light you would not lay it down on a chart?

A. Maybe I would and maybe I would not.

Q. Well, if you didn't you would not know where it was, isn't that so?

A. No, that is not so.

The Court: Proceed with some other subject.

Q. (By Mr. Ryan) Now, when you checked these charts that came out of this box, or wherever they came from, for the "Denali", you say that they were all there that she had then—is that what you want to say—she had a complete set?

A. Yes, sir. She had a complete set. [2235]

Q. Then why did you order some more?

A. Well, I just told you that awhile ago—I maybe wanted some new charts for certain districts.

Q. Do you mean to say that these charts that you ordered were all new charts?

A. No.

Q. Then why did you order them?

A. Well, because we wanted them renewed for some certain reason.

Q. You wanted up to date charts for the voyage, isn't that right?

A. There was some reason. I don't know exactly why I ordered them—I don't remember exactly why I ordered them.

Q. Wasn't that the reason? If you bought a new set of charts you would take them already corrected

(Testimony of Erwin P. Larson.)

up to date by the Government, and they would be right up to date when you sailed, isn't that right?

A. No, siree.

Q. You didn't care whether they were up to date or not, is that it?

A. We had all the charts on the Steamship "Denali" corrected up through the Notices to the Mariners. It is absolutely not necessary whenever there is a little correction or a little change on a certain chart, to buy a new chart. That is why we get the Notices to the Mariners.

Q. Well, why did you buy this brand new set of charts?

A. I told you that we wanted—we wanted the charts new for some certain reason. Right now——

Q. (Interposing) Give us the reason right now.

[2236]

A. I don't remember it now here.

Q. Now, the petitioner's home office here took on itself the job of supplying notices to mariners to these ships, didn't it, by sticking them in some kind of a pigeon hole down in the office down here?

A. The company did?

Q. Yes.

A. I don't know how you get them, but every ship that I have ever been on and seen, they get them sent. I don't know how they get it from the Government. The government sends them out in some way or another, but I couldn't tell you how.

Q. But the petitioner's home office here—that is,

(Testimony of Erwin P. Larson.)

Murphy's or Tracy's office, is the one that supplies them to you through this pigeon hole affair, isn't it?

A. Well, if I didn't get them, I would go some place else to get them.

Q. Isn't that so?

A. What is the question?

(Question read as follows:

“But the petitioner's home office here—that is, Murphy's or Tracy's office, is the one that supplies them to you through this pigeon hole affair, isn't it?”)

Q. (By Mr. Ryan) Isn't that right?

A. No, sir.

Q. Well, you have testified that that is so.

A. I have testified that we got them through the mailbox, yes.

Q. In the petitioner's home office, here in Seattle, isn't that right? [2237]

A. Yes, sir.

Q. That is Mr. Murphy's or Mr. Tracy's office, isn't it?

A. No. It is the main office.

Q. Well, Mr. Wilson's office?

A. No. It is the main office.

Q. It is the main office?

A. Yes, sir.

Q. Well, that is all right. Now, you mentioned some report that you gave to the master, and you said, “I told him that I was satisfied in my own mind that the compasses were in good condition”.

(Testimony of Erwin P. Larson.)

What was the time that you gave that statement to him—that report that you say was not in writing?

A. It is hard to remember exactly the exact date. It was during the time in Seattle.

The Court: At this time we will take a ten minute recess.

(Recess) [2238]

Q. (By Ryan) When did the “Denali” start navigating on chart H.O. 2828, if you know, using that chart for navigational purposes?

A. I couldn't remember what time she started.

Q. What chart was being used for navigating the “Denali” up to the time they began using chart H.O. 2828, if you know?

A. Oh, I don't know.

Q. Were you ever asked by Pilot Obert to take an azimuth on a North $\frac{3}{4}$ West, or a North heading of the “Denali”?

A. Not that I can remember.

Q. Did you ever take an azimuth on a North $\frac{3}{4}$ West heading of the “Denali” or a north heading of the “Denali”, after the ship went out of the Straits of San Juan de Fuca, and on this voyage?

A. I took some on Northwest.

Q. On Northwest?

A. Yes.

Q. On what day did you take that, an azimuth on that heading?

A. The 17th or the 18th.

(Testimony of Erwin P. Larson.)

Q. That is 45 degrees away from North, isn't it?

A. Yes.

Q. The ship was never on a course North after passing out of Cape Flattery on her way up to the point of the stranding, was she?

A. That I couldn't tell you. I have no idea.

Q. So far as you know, she was not, was she?

A. No; not as far as I know, no.

Q. Was she ever on a course North, so far as you know, from the time of sailing from Pier 2?

[2239]

A. Well, she was on the North outside of West Point.

Q. That is the only time you can think of, isn't that right?—That you can give us, I mean?

A. Yes; that is the only time I can think of.

Q. You joined the ship on May 13th—what date did you join the ship?

A. Well, officially—

Q. (Interposing) No; I mean actually joined the ship, go down to perform work on her.

A. Well, it is hard to answer that question the way you are asking me. I joined the ship the day before, but I wasn't officially second mate there. I was on board the "Denali" a day or two before. I can't remember exactly.

Q. What is the first day and the time of day that you went on board the "Denali" in connection with this voyage?

A. The first time, maybe a day or two before.

(Testimony of Erwin P. Larson.)

Q. Give us the date.

A. That would be the 11th or 12th. I was over in the yard and on all the ships. I couldn't exactly say when I went on board the "Denali". I was working in the yard at the time.

Q. How long did you stay on the "Denali" that first time you went on board of her?

A. How long?

Q. Yes; and who was with you?

A. Who was with me?—I couldn't remember——

Q. (Interposing) Do you remember how long you stayed on her the first time you went on board?

A. It is hard for me to remember how long I stayed on the ship. We go from one ship to the other in the yard. [2240]

Q. When did your duties start, when did your wages start as an officer of this ship, the "Denali"?

A. May 13th.

Q. On May 13th?

A. Yes.

Q. And you went to work on the ship on what day, what time of day on the 13th?

A. Well, 6:00 in the morning.

Q. How long did you stay on the "Denali", working, on that day?

A. Oh, until 10:00 or 11:00 o'clock, maybe.

Q. At night or in the morning?

A. In the morning.

Q. Then what did you do; go home, or what did you do?

(Testimony of Erwin P. Larson.)

A. Gosh, I don't remember. I went home to get some clothes that day—oh, I can't remember.

Q. I am trying to find out the fact. You had some kind of a time-book or something you were referring to on direct examination.

A. Time-book?

Q. Didn't you have some book you were referring to to get these dates accurately?

A. No.

Q. Well, you went to work at about 6:00 a. m. on the morning of May 13th, and stayed on duty there until about 10:00 or 11 o'clock a. m. on that day, and then what did you do, then where did you go?

A. I went home for my clothes, some of it.

Q. Then when did you go back to the "Denali" the next time and go on duty? [2241]

A. Well, the next time she moved.

Q. Give us the date.

A. When she moved that afternoon.

Q. May 13th?

A. Yes.

Q. At what time?

A. In the afternoon some time.

Q. Now, I am trying to get the date and the time of day, and the quicker you give it to me the quicker we will get along.

A. Let me have the log book and I can tell you. I can't remember exactly the time I went back to the ship.

Q. I just want to find out when you started work and left work on each of those dates.

(Testimony of Erwin P. Larson.)

A. We left at 7:25.

Q. On what date?

A. May 13th.

Q. At 7:25 a. m. or p. m.?

A. A. M.

Q. At 7:25 a. m., May 13th, you started work, and then how long did you continue work?

A. I say we left at 7:25, and I went to work at approximately 7:00 o'clock, we will say.

Q. You stayed on the work how long?

A. Until 10:00 o'clock.

Q. Then when did you next go on duty on the "Denali"?

A. At 2:40 to 3:10.

Q. That afternoon?

A. Yes.

Q. Of May 13th? [2242]

A. Yes.

Q. Then where did you go?

A. We went from the Arden Salt Dock——

Q. (Interposing) No; I am asking you where you went when you went off duty.

A. I may have gone home to see my wife. I can't remember.

Q. That is what I am trying to get at. I want to find out where you were, whether you were on duty or not?

A. I told you I was on duty from 2:40 to 3:10.

Q. Then where did you go?

Mr. Long: I object to that.

(Testimony of Erwin P. Larson.)

The Witness: I cannot remember. It was my own private time; I cannot remember.

Q. When did you next go back on duty on the "Denali", after 3:10 p. m. on May 13th?

A. At 6:10 in the evening.

Q. That same evening?

A. Yes.

Q. How long did you stay on duty?

A. Until 6:30; 20 minutes.

Q. Then where did you go? Did you go home?

The Court: You can simply say if you recall.

The Witness: I cannot remember where I went to.

The Court: All right, then.

Q. (By Mr. Ryan) When did you next go back on duty on the "Denali"?

Mr. Long: I object to all of this, Your Honor, as wholly immaterial.

The Court: The objection is overruled.

Mr. Long: This is before the Articles were signed. [2243]

The Court: The Court has ruled, Mr. Long.

Mr. Long: I just want to point that out to Your Honor.

The Court: Take your seat, Mr. Long.

The Witness: On May 14th, in the evening, from 7:40, approximately, until—I think I stayed on board the ship—I was not on duty then, exactly—I stayed on board the ship and straightened out my clothes and put them away.

(Testimony of Erwin P. Larson.)

Q. (By Mr. Ryan) All right. The next morning, then, what time did you go on duty, May 15th?

A. Oh, we left——

Q. (Interposing) I am asking when you went on duty, and do not get in a lot of irrelevant matter.

A. 4:00 or 5:00 in the morning.

Q. 4:00 or 5:00 in the morning?

A. Yes.

Q. How long did you stay on duty of May 15th?

A. I stayed on duty until 4:30 in the morning.

Q. Then where did you go?

A. I don't know.

Q. Then when did you next go back on duty on the "Denali"?

A. At 7:55.

Q. Now, please give us the date, and whether it was morning or P. M., in each instance, so that I will not have to ask you.

A. It was A. M.

Q. 7:55 A. M.?

A. Yes.

Q. What is the date? Please give the date and the time of [2244] day in each instance, so that I will not have to ask you.

A. Wednesday, May 15, 1935, at 7:55 a. m.

Q. Do not read the book, but tell me when you went on duty. You went on duty at 7:55 on May 15th, and how long did you stay on duty?

A. Until 8:20.

(Testimony of Erwin P. Larson.)

Mr. Long: Just a minute, please—

The Court: Just a minute, Mr. Ryan.

Mr. Long: I think the witness said he doesn't remember, but he is reading the book as to the time the ship moved.

The Court: The objection is sustained. He may read from the book, in view of the fact that it is in evidence, and in view of the fact that the witness says that he does not specifically remember.

Mr. Ryan: You mean the objection is overruled?

The Court: I mean the objection is sustained to you declining to let him read from the book.

Mr. Ryan: But when he says he doesn't know—well, pardon me. Of course I have no objection.

Q. (By Mr. Ryan) When did you go off duty on May 15th—no; you say you went off duty at 8:20 on May 15th—when did you next go on duty on the "Denali"?

A. Well, the best I can remember would be May 16th, at 5:43 a. m.

Q. So you left the ship at 8:20 a. m. on May 15th, and stayed away until 5:43 a. m. on May 16th, is that correct?

A. No; I don't say that I did. I don't know what I did that day. There is nothing in the book, and I cannot account for my time. [2245]

Q. You were not on board the ship at all on the day before sailing, were you, from 8:20 a. m. until 5:43 a. m. on May 16th, when she sailed?

(Testimony of Erwin P. Larson.)

A. I certainly was aboard, because I slept on board the night before we sailed, so I must have been on board.

Q. Were you on duty at any time?

A. I cannot remember, the day before. I might have been on duty that evening.

Q. Well, give us your knowledge, or your best recollection.

A. That is what I am giving you.

Q. What your duties were on that day, if any.

A. Well, I cannot tell you exactly what I did that day. I might have been on duty that evening, and I might not have been on duty that evening. I know I was on board the ship the night before we left.

Q. What are your duties as second officer in connection with the sailing of the ship?

A. You mean leaving port?

Q. Yes; getting ready to leave from Pier 2.

A. Leaving Pier 2 I would either be back aft taking in the lines, or on the bridge of the "Denali", as I would be on any ship, handling the telegraph or taking the time we left.

Q. When did you start in performing those duties in connection with the sailing from Pier 2?

A. Thursday, May 16th.

The Court: What time?

The Witness: At 5:43 a. m.

Q. You did not perform any duty before that, on that ship?

(Testimony of Erwin P. Larson.)

A. Not that day. [2246]

Q. Are you sure about that? What time did you get up that morning, the sailing date?

A. They may have called me shortly after 5:00, and I went up and had my coffee.

Q. I am not asking you to guess; if you do not know, say so, or if you do know then tell us.

A. I went on duty at 5:43, that is all I can tell you. I don't know exactly.

Q. On the day you left your last duty on the "Denali" before that,—you went on duty at 5:43 a. m.?

The Court: If you know.

Q. If you know.

A. I couldn't remember exactly my last duty before that time; I couldn't do that.

Q. You remember in great detail everything you did until the day before sailing, and the night of sailing, and then you don't know what on earth you were doing, is that right?

Mr. Long: I must object to that remark.

Mr. Ryan: Strike it; I will withdraw it.

The Court: The objection is sustained, and the remark is stricken.

Mr. Long: I move that it be stricken.

The Court: It is stricken.

Q. (By Mr. Ryan) How did you establish the distance off Bonilla, by reading the log or by the time and speed of the ship?

A. I did.

(Testimony of Erwin P. Larson.)

Q. How did you establish the distance off Bonilla?

A. Off Bonilla Island? [2247]

Q. Yes.

A. Well, at 6:43 p.m. we took the four point bearing, read the time on the log.

Q. You took it by reading the log, is that right?

A. Well, we took a four point bearing, and at the same time we took the time by reading the log.

Q. That distance abeam of Bonilla Island was taken by you, wasn't it?

A. Yes.

Q. And you took it by taking your bow bearing and having the log read then, is that right, and then by taking your abeam bearing and taking the log reading at that time?

A. After we got it abeam, yes.

Q. That is the way this particular bow and beam bearing was taken?

A. I think so. That is the only way you can take a four point bearing.

Q. What was the distance bearing of the "Denali" from Bonilla Island at that time?

A. Oh, five miles.

Q. You are absolutely certain of that position, are you?

A. Well, certainly, of the position—well, you are never certain of a position off Vancouver or in Alaska waters, where there is a strong current

(Testimony of Erwin P. Larson.)

or tide on you. Your log will never show the same, she will never be correct. You do not know the strength of the tide.

Q. So you are not even certain that the bow and beam bearing that you took off Bonilla was right?

A. She might have been right and might have been out.

Q. You were not sure? [2248]

A. You are never sure on anything in Alaska.

Q. Did you take a bearing on Oval Bank Buoy Light?

A. Oval Bank Buoy, we took it when she was abeam.

Q. Did you take a bow and beam bearing on it?

A. No, we did not.

Q. You did not take a bow and beam bearing on Oval Bank Light?

A. No.

Mr. Long: You can explain that.

The Witness: At that time of the evening it was not quite dark enough, and we was a little bit too far off, in my estimation, to see the Buoy, up until we just got abeam. The Buoy will never show more than five or six miles, and in my opinion it was more than that off.

Q. So you never established the distance the "Denali" was off Oval Bank Buoy, did you?

A. No; we couldn't do it.

Q. At what time did you sight Triple Island Light, that is, the light itself?—Not the loom of the light.

(Testimony of Erwin P. Larson.)

A. Oh, around 20 minutes after 10:00, or maybe ten to 5:00, when we were there—10:30, somewhere along there. I wouldn't say exactly the minute. We saw the light quite a bit before, the reflection of it.

Q. I tried to make the question clear——

The Court: Have it read again.

Q. I want you to not mention "reflected", "reflection" or "glow" in your answer to this question. I am asking you now, when did you first see the light itself?

A. Between——

Q. (Interposing) Just a minute, so I can make this clear; [2249] you know you can only see a light a certain distance on account of the curvature of the earth, don't you?

A. Yes.

Q. Now, I am asking you, when you first saw Triple Island Light, the light itself—not any loom or glare or glow or reflection—now, tell me that, if you know it, and if you do not know it you can say so.

A. Yes. Approximately between 10:20 and 10:30, some time.

Q. That is P. M. on May 18th, 1935, is that right?

A. Yes; sure, it was P. M.

Q. When did you first sight the loom or reflection of Triple Island Light on the evening?

A. Shortly after 10:00.

Q. About what time?

(Testimony of Erwin P. Larson.)

A. Well, shortly after 10:00; from 10:00 to 10:10.

Q. There is no entry in your log book of you either sighting the loom of Triple Island Light, or sighting the light itself?

A. No.

Q. And you were the officer on watch?

A. No.

Q. You were making the entries in the log book?

A. Yes.

Q. Why didn't you enter the time you sighted that light?

A. I never saw them do it in the American Merchant Marine.

Q. When you sight a light you know you are on the extreme of visibility of that light, don't you?

A. Why, you wouldn't—

Q. (Interposing) If you are heading up there toward the light? Answer the question. [2250]

A. Do you know—

Q. (Interposing) Do not ask me that; answer the question, please.

A. No, you wouldn't know.

Q. You wouldn't know?

A. No.

Q. If I am heading toward a light at night—

A. Yes.

Q. (Continuing) And I suddenly see it—

A. Yes.

Q. (Continuing) —that doesn't indicate anything at all as to the fact that I am at the extreme

(Testimony of Erwin P. Larson.)

of visibility of that light as shown on the chart, does it?

A. Why——

Q. (Interposing) Answer that yes or no.

Mr. Long: Answer it the way you can answer it.

The Court: The Court will instruct the witness, Mr. Long, and do not interrupt except to make a legal objection.

Mr. Long: I object to the form of the question.

The Court: The objection is overruled. If you can answer the question you may do so.

The Witness: Read the question. (Question read.)

Mr. Long: I still object to the form of the question.

The Court: The objection is overruled.

The Witness: I cannot answer the question the way you have got it shaped. I can explain it.

The Court: You may do that now.

The Witness: Going by a light one day or one night [2251] you will see the light itself blink—the loom of the light is 15 miles—you will see it, maybe the loom of the light that day, or that very night, 12 or 13 or 14 miles. You go by the very same light the next trip and you might see the same light 16 or 18 miles. It all depends on the atmosphere and the air. Just because the light is marked 15 or 16 miles, or 12 miles on a chart, and in a light list, that has nothing to do with how far you can see a light, absolutely nothing.

(Testimony of Erwin P. Larson.)

Q. If it is a clear night, so that there is nothing peculiar about the atmosphere, the fact that you sighted the light indicates to you nothing?

A. No.

Q. When you examine the chart and see what the Government has said is the limit of visibility there, that you are on——

A. (Interposing) No.

Q. (Continuing) ——on the arc described at a point of the extreme visibility of that light, as shown on the chart——

A. (Interposing) Absolutely, no.

Q. (Continuing) ——it doesn't indicate anything at all about it?

A. It don't indicate anything to me.

Q. You ignore the chart in that respect?

A. No; I do not. I am using my head, that is all.

Q. Isn't every one of these lights——doesn't it have right underneath it the distance it is visible?

A. I just testified, I told you that it has.

Q. That is so, isn't it; no matter how powerful the light, you can only see the light itself a certain distance on [2252] account of the curvature of the earth, isn't that so?

A. No. It might be different air the next time you are going by, and if it is a nice clear night you might only be 12 miles off the light, and it is supposed to show 15, and you don't see it.

Q. You do not dispute that the earth is round, do you?

(Testimony of Erwin P. Larson.)

A. No.

Q. Then what are you talking about?

The Court: Proceed with another question.

Q. Do you know what time Triple Island Light was abeam the "Denali"? No; I do not ask you to read what somebody did, but I am asking you if you know of your own knowledge.

A. Shortly after 12:00—12:06 or 12:08, whatever time it was.

Q. Did you see it when it was abeam? Did you see when Triple Island Light was abeam of the "Denali"?

A. No, I did not.

Q. Where were you?

A. Down in my room, maybe.

Q. Do not put in "maybe"—if you do not know, say so, and if you do know you can say so.

A. I don't know where I was at.

Q. Can you give us your best recollection as to where you were when Triple Island Light was abeam on that night?

A. I just told you I might have been down in my room, or might have been down for a cup of coffee.

Q. Your answer is that you do not know where you were, is that it?

Mr. Long: If Your Honor please, I object to this [2253] constant argument with the witness.

(Testimony of Erwin P. Larson.)

The Court: The objection is sustained.

Q. It was abeam within three minutes after you left the bridge, wasn't it, according to the log book?

A. I don't know. You wouldn't let me look in the log book.

Q. When did you leave the bridge on the morning of May 19, 1935?

A. One or two minutes after 12:00.

Q. How many minutes?

A. One or two minutes.

Q. I thought you said three or four minutes after 12:00.

A. No; I said one or two minutes.

Q. You want to get it down to one or two minutes now?

Mr. Long: Just a minute; there is a proper way to examine the witness, and I resent counsel's continued——

Mr. Ryan: (Interposing) I withdraw that, Your Honor.

The Court: It will be stricken. Mr. Long, you should use more technical language, and also more self-control.

Mr. Long: I resent the inference of counsel's remarks.

The Court: It is not for you to resent anything. The Court will attend to the resentment and the proper conduct of the trial.

(Testimony of Erwin P. Larson.)

Mr. Long: I am making the record and that is all I have in mind.

The Court: The use of the word "resent" is out of keeping with the proper atmosphere of the court room, [2254] and you gentlemen must cease this display of anger or temper in this courtroom. And I will say this to all connected with the case, that the next lawyer connected with this case who displays towards or against opposing counsel any anger or hot temper hereafter is going to be held for contempt. That applies to everyone connected with this case. Proceed.

Q. (By Mr. Ryan) Do you know at what distance abeam Triple Point Light would have been if the "Denali" continued on the track or course which was laid down on the chart that you and the captain were using in navigating the "Denali" on the night of the stranding?

A. I did not use any chart in navigating, because I never did no navigating on course or tracks at any time. The captain was the navigator on my watch.

Q. You do not even now know at what distance abeam Triple Point Island was expected to be passed by the "Denali" on the night that you were on watch, is that so?

A. No; I don't remember.

Q. You don't know now?

A. No; I can't remember.

Q. Did you ever know?

(Testimony of Erwin P. Larson.)

A. Well, I may have—it is hard to remember—I wouldn't know. It is between the captain and the pilot, wherever they go.

Q. On direct examination you referred to a personal timebook, to refresh your recollection.

A. Time-book?

Q. Yes.

A. I think you are referring to the time cards from the [2255] West Seattle yard (showing).

Q. That is right; that is it. Now, can you look at those time cards and tell me when you were on duty between May 13th and May 16th, 5:30 a. m.?

A. Here is the time cards for the time of the inspection of the S.S. "Denali", January 29 and January 31, 1935.

Q. And that is all they are for; that is the only period they cover?

A. Yes. I have got them here. That is all I have here.

Mr. Ryan: That is all, Your Honor.

Redirect Examination

By Mr. Long:

Q. Mr. Larson, when did you sign Articles for this voyage?

A. Oh, I couldn't remember what time I signed Articles. The day before we left.

Q. The certified copy of the Articles in evidence indicates May 15th; does that correspond with your best recollection?

(Testimony of Erwin P. Larson.)

A. I think that is the day we signed on, yes.

Q. Were you on any watches set prior to that date on this ship?

A. Why, no; we didn't have any watches.

Q. Are you on ship's pay prior to that date?—
I mean in a sea sense?

Mr. Summers: I object to that as argumentative.

Mr. Long: I want to explain the difference, if Your Honor please.

The Court: The objection is overruled.

The Witness: I couldn't remember that. [2256]

The Court: He says he doesn't remember.

Mr. Long: Very well.

Q. (By Mr. Long) Now, when you and Capt. Healy took the azimuths off West Point did you take one on a North heading?

A. Yes; we took one on a North heading.

Q. On what heading, right or left of North?

Mr. Summers: That is not proper redirect examination, Your Honor. The cross examination did not go into that.

Mr. Long: I have just one question.

The Court: There was something about a quarter of a compass involved.

Mr. Ryan: No, Your Honor, not a word about the swinging of the ship down there. I didn't ask him about that at all.

The Court: There was something about a quarter of a compass being involved.

(Testimony of Erwin P. Larson.)

Mr. Ryan: That was on the direct examination, Your Honor, and not on the cross examination; not a word about that.

The Court: All right.

Mr. Long: He asked him about the north azimuth, and I want to clear the record and show they were taken. It will take just one question.

The Court: No; unless there was some question—do you wish the privilege of recalling him?

Mr. Long: Just for the one question?

The Court: Yes.

Q. (By Mr. Long) You took an azimuth on the North heading, you say? [2257]

A. Yes.

Q. Did you take one?

Mr. Ryan: We object to that as leading.

Q. On what heading immediately to the right and left of North did you take azimuths?

A. After we took the North we took North by East.

Q. On the other side?

A. North by East is the next one.

Q. When you take a heading on the other side of North it North by East?

A. Yes; before we get to North.

Q. What was that heading?

A. North by West.

Q. Were those entered in the azimuth book?

A. Yes.

Mr. Ryan: That is objected to, Your Honor.

(Testimony of Erwin P. Larson.)

Q. Where were they entered?

A. In the deviation book.

Mr. Ryan: I move to strike that answer.

The Court: Yes, it may be stricken.

Q. Where were they entered?

The Court: If anywhere.

Mr. Long: Yes.

The Witness: In the deviation book.

Q. (By Mr. Long) In the deviation book is the same as referred to as the azimuth book?

A. Yes.

Q. Is that the same term?

A. The same book, yes, sir.

Mr. Long: That is all. [2258]

The Court: You may inquire on further cross examination as to this subject matter.

Mr. Ryan: No questions.

The Court: Very well. You are excused from the witness stand. Call your next witness.

(Witness excused.)

JAMES B. LAWTON,

called as witness on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Long:

Q. State your full name, Mr. Lawton, and speak clearly and distinctly as you can.

A. James B. Lawton.

Q. Are you married?

A. Yes, sir.

Q. Where do you live?

A. 507 First Avenue North, Seattle.

Q. What is your business or profession?

A. Seafarer.

Q. Do you hold any license issued by the Department of Commerce, United States Steamboat Inspection Service?

A. Yes, sir; Third Mate, any ocean, any tonnage.

Q. Is that commonly referred to as Third Mate, unlimited?

A. Third mate, unlimited.

Q. Have you your license with you?

A. Yes, I have (showing).

Mr. Long: I ask the privilege of having that entered [2259] in the record.

Mr. Ryan: No objection to having it copied in the record.

Mr. Long: The same as we have before. I would like to have it copied into the record and returned to the witness.

(Testimony of James B. Lawton.)

The Court: That may be done. The reporter will copy it into the record at this point.

(First page)

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|---------------|------------------|
| “C. Form 871 | File No. L 16618 |
| Serial Number | Issue Number |
| 56565 | 1, 1 |

United States Department of Commerce
 Steamboat Inspection Service
 License to Mate of Ocean or Coastwise
 Steam and Motor Vessels:

This is to certify that James B. Lawton having given satisfactory evidence to the undersigned United States Local Inspectors, Steamboat Inspection Service, for the district of Seattle, Wash., that he is a skilful navigator and can be intrusted to perform the duties of Third Mate on Steam and Motor Vessels of any gross tons, upon the waters of any Ocean is hereby licensed to act as such Third Mate on Steam and Motor Vessels for the term of five years from this date. Given under our hands this 14th day of October, 1934.

WILLIAM M. CAMPBELL,
 Acting U. S. Local Inspector
 of Boilers.

DANIEL B. HUTCHINGS,
 Acting U. S. Local Inspector
 of Hulls.

O Ford 1108 [2260]

(Testimony of James B. Lawton.)

(Second page)

Signature of holder of license James B. Lawton.

Date of birth Jan. 2, 1907.

Place of birth Blue Canyon, Wash.

Native

Date of Naturalization

Place of Naturalization

By what Court

Naturalization Certificate No.

Present address Studio Apts., Seattle.

Passed visual examination Yes, Dec. 7, 1934.

Visual examination on file in the office of Seattle, Wash.

DANIEL B. HUTCHINGS,
WILLIAM M. CAMPBELL,
(Acting U. S. Local Inspectors issuing
this license.)

Passed examination for color blindness at Seattle, Washington, Dec. 7, 1934.

DANIEL B. HUTCHINGS,
WILLIAM M. CAMPBELL,
Acting Local Inspector."

Q. (By Mr. Long) On May 13th, 1935, what license did you hold?

A. Third mate, unlimited.

Q. How many years had you been going to sea prior to that time?

A. About 12 or 13 years.

(Testimony of James B. Lawton.)

Q. In what service, or in what trade?

A. The biggest part of it was on the Alaska run, Southeastern and Southwestern Alaska.

Q. By whom were you assigned to the steamer "Denali"?

A. I was assigned to the "Denali" by Mr. Tracy. [2261]

Q. Had you ever sailed before with Capt. Healy?

A. Yes, sir, I had.

Q. And Mr. Larson?

A. Yes.

Q. And Mr. Cleasby?

A. Yes.

Q. And Capt. Obert?

A. Yes, sir.

Q. What date did you join the "Denali", and where?

A. I joined her May 13th, 1935, at the West Seattle yard.

Q. Had you been aboard the ship on the previous date, immediately prior to that time?

A. Oh, during the month I probably had been aboard her several times.

Q. Were you employed in the yard at West Seattle?

A. Yes, I was.

Q. During the winter of 1934 and the spring of 1935?

A. Yes, sir.

Q. After joining the ship—would you tell what time you joined her, approximately?

(Testimony of James B. Lawton.)

A. Oh, I will say between 6:00 and 6:30 in the morning of May 13th.

Q. What did you do; what duties did you have that morning before the ship left West Seattle?

A. As soon as I got straightened around in the ship I went up on the bridge and checked over the gear that we needed for immediate use.

Q. What did that consist of?

A. It consisted of the harbor charts, parallel rulers, dividers, log book and pencils. [2262]

Q. Who else was present in the pilot house at that time, or approximately that time?

A. The chief mate and the second mate.

Q. Where was Capt. Healy, if you know?

A. I don't know.

Q. When did Capt. Healy join the ship, at what time?

A. He came aboard the same morning sometime. I don't know just when.

Q. What did you do from there on until about the time the ship left West Seattle?

A. I assisted the mate and the second mate. We checked the steam whistle, the telegraph to the engine room, the steering gear, and the speaking tubes to different parts of the ship.

Q. How did you find those instruments, that part of the ship's equipment?

A. All equipment was in good order.

Q. Did you check any other equipment while at West Seattle that morning?

(Testimony of James B. Lawton.)

A. Well, that morning we moved in about half an hour later. I didn't check any more.

Q. Very well. What time did you move?

A. We moved around 7:30 in the morning, the same morning.

Q. Where did you go?

A. We went to the Arden Salt Dock.

Q. Were you on the bridge at that time?

A. Yes, sir.

Q. Who else was on the bridge?

A. The captain.

Q. What course was laid out, or what kind of a course was [2263] laid out to the Arden Salt Dock?

A. The captain laid off a magnetic course from West Seattle over to the Arden Salt Dock.

Q. Do you know whether the vessel made that course?

A. Sir?

Q. Did the vessel make that course?

A. Yes; she made that course good.

Q. Do you recall how long you laid at the Arden Salt Dock that day, approximately?

A. Well, I would say around six hours.

Q. What did you during that period, do you remember, with reference to any duties in the pilot house or elsewhere on the ship?

A. I started checking the navigation instruments.

Q. With whom?

A. With the second mate.

(Testimony of James B. Lawton.)

Q. Mr. Larson?

A. Yes, sir.

Q. What did you check, just briefly—not in great detail, but just generally what was done?

A. We checked everything pertaining to the navigation, such as the bearing board, the rulers, the dividers, the pelorus, the azimuth mirror, pilot books, which consisted of Canadian Pilots and American Coast Pilot books, Canadian and American tide tables, Canadian and American Light Lists, Canadian and American azimuth tables, the log-lines, of which we had three, three complete log-lines, and the searchlight—we checked that—we checked the lights in the binnacles——

Q. (Interposing) The binnacles of what? [2264]

A. Of the compass.

Q. Did you look at the compasses?

A. Yes, I did.

Q. Did you make any cursory examination or otherwise as to their physical condition?

A. Yes, I did. They worked freely and had good clean compass cards, no bubbles in them. They looked that way to me.

Q. Did you make any check of the running lights of the ship?

A. Yes; I did. I checked them.

Q. When you refer to the running lights you mean what?

A. I mean the port light, the red light; the green light, or starboard light; the masthead light and the range light, which is on the after mast.

(Testimony of James B. Lawton.)

Q. Did you assist the second officer in checking the charts?

A. Yes, sir, we checked all of the charts.

Q. From what source did you check? How did you check them? I do not mean the details of it?

A. Oh, we had the Canadian and the American catalogues.

Q. What kind of catalogues?

A. Chart catalogues. We went through the numbers, and the second mate checked them off the catalogue as we went through them. [2265]

Q. Generally speaking, Mr. Lawton, what charts did you have on board at the time that this check was made—what area did they cover?

Mr. Ryan: I object to that as ambiguous and an unintelligible question. If he wants to know what charts they had, he can ask him for them. There is a definite way that he has to identify the charts.

The Court: Objection overruled.

Mr. Long: Read the question.

(Question read as follows:

“Generally speaking, Mr. Lawton, what charts did you have on board at the time that this check was made—what area did they cover?”)

A. We had a complete set of charts for Puget Sound and British Columbia waters, and Southwestern Alaska, Southeastern Alaska, Bering Sea, Bristol Bay. A complete set of charts.

(Testimony of James B. Lawton.)

Q. Do you remember the numbers of all of those charts?

A. No, I don't remember the numbers.

Q. Now, did the second officer and yourself make up any list of new charts that you put in a requisition for?

A. Yes. We had a list of them.

Q. And were those charts received aboard the ship to your knowledge?

A. Yes, sir.

Q. Were there any deviation cards posted in the pilot house, or where were they posted with reference to the bridge?

A. There were deviation cards posted in the chart room.

Q. Do you remember the date of them? [2266]

A. I cannot remember the date, but it was in 1933.

Q. What is that?

The Court: He said that he could not remember the date, but it was in 1933.

Q. (By Mr. Long) Were you on the vessel, Mr. Lawton, at any time while she was moving about the harbor here before sailing from Pier 2?

A. Yes. I was on several moves.

Mr. Ryan: I am sorry, but I didn't hear the answer.

The Court: Read the answer.

(Answer read)

(Testimony of James B. Lawton.)

The Court: Mr. Lawton, please keep your voice raised, and talk distinctly and clearly so that counsel at the counsel table can hear you, and the Court can hear you.

Q. (By Mr. Long) With what superior officer were you on during those moves?

A. With Captain Healy, the master.

Q. Now, during those moves that you were with Captain Healy did you observe Captain Healy take any bearings or laying any courses or making any——

Mr. Ryan: (Interposing) I object to that on the ground that it is leading. Ask him what he observed.

Mr. Long: He may have observed a thousand things, and I am trying to direct his attention to this particular phase of it.

The Court: Objection overruled.

Mr. Long: Read the question, please. [2267]

(Question read as follows:

“Now, during those moves that you were with Captain Healy did you observe Captain Healy take any bearings or laying any courses or making any——”)

Q. (Continuing) Or making any checks of his compasses on the “Denali”?

A. Yes, I saw him several times while I was up there.

Q. While you were in the wheel house, and during these moves, could you tell us whether or not the vessel made her courses as they were laid?

(Testimony of James B. Lawton.)

A. Yes, sir. The captain remarked that she made her courses good.

Mr. Ryan: I move to strike out what the captain remarked.

The Court: Yes.

Mr. Long: I think that this is a part of the course of business. He was aiding the captain—

Mr. Ryan: (Interposing) This is hearsay.

Mr. Long: (Continuing) —in the navigation of the ship. I think it is competent, for whatever the Court thinks it is worth, of course.

The Court: I believe it should be stricken, and it is so ordered.

Mr. Long: Very well.

Q. (By Mr. Long) During the time that you were on the bridge, during the moves in Seattle, did you discover any defects in either the standard or steering compass?

A. No, I did not.

Q. Did you observe any unusual deviations?

A. No. [2268]

Q. How did the steering gear perform during these moves?

A. Sir?

Q. How did the steering gear perform during these moves?

A. The steering gear was in good order all the time.

Q. During these moves was the vessel backed or reversed on any occasions?

(Testimony of James B. Lawton.)

A. Yes, on lots of occasions.

The Court: Try to avoid leading the witness, Mr. Long.

Mr. Long: I will, Your Honor. I am trying to hurry along.

The Court: Ask him what they did.

Q. (By Mr. Long) Now, where were you, Mr. Lawton, when the vessel sailed on May 16th?

A. When she actually sailed?

Q. Yes.

A. I was standing by the after lines, in charge of them.

Q. After she had cleared the dock, what did you do?

A. I stepped back aft, where I was supposed to go, until the ship was turned around and headed on her course.

Q. Then where did you go?

A. The second mate relieved me and I went below.

Q. Did you at any time during that morning perform any duties on the bridge?

A. Yes.

Q. I am referring to the morning of May 16th.

A. Yes, I did.

Q. Where did the vessel—did the vessel stop at any place in the harbor or outside of the harbor?

A. The vessel stopped off of West Point. [2269]

Q. Now tell us just what you did during that period.

(Testimony of James B. Lawton.)

A. Why, the captain was going to swing ship for azimuths, and I asked him what he wanted me to do. He said, "You stand down in the pilot house by the telegraph", and that is just what I did.

Q. Who was in the pilot house with you?

A. There was a man at the wheel.

Q. The helmsman at the wheel?

A. Yes, sir.

Q. Where was Captain Healy?

A. Captain Healy was on the top deck.

Q. Anybody with him?

A. Yes, the second mate was with him.

Q. Just tell us what occurred.

A. Well, I was up there for about an hour. They swung the ship for about half of the compass, and he used quite a few different bells to the engine room, to go ahead, stop, and so forth.

Q. And do you recall, Mr. Lawton, approximately what time this was?

A. Oh, it was between 7:00 and 8:00 A. M.

Q. Well, now, what were your duties? What signals did you give? Just tell us what you personally did in connection with that. You say that you handled the telegraph?

A. Yes, sir.

Q. What do you mean by that?

A. Well, the captain or the second mate would holler down the speaking tube to slow ahead, and I would put it on the pilot house telegraph, to slow ahead. They would [2270] answer from the

(Testimony of James B. Lawton.)

engine room, indicating that the ship was going slow ahead.

Q. I see.

A. And maybe it would be stop next.

Q. Do you know on what courses, generally, or on what points the azimuths were taken?

A. Yes. The azimuths were taken from West Southwest.

Mr. Ryan: Well, the witness testified that he didn't take them, and that he was not in the place where they were taken, and so I object to this as calling for speculation and conjecture.

Mr. Long: I will lay the foundation for that.

Q. (By Mr. Long) Mr. Lawton, when you were on the watch with Captain Obert did you have occasion to see the deviation book?

A. Yes, sir, I did.

Q. Did you see the calculations and deviations obtained during the swinging at West Point?

A. Yes, I certainly did.

Q. And approximately over what area or over what part of the compass did those deviations cover?

A. The ones taken at West Point covered from West Southwest around to the Northeast.

Q. And how often on that trip did you see that book?

A. Every time that I went on watch.

Q. Did you take any azimuths yourself on this trip?

(Testimony of James B. Lawton.)

A. Yes, I did.

Q. What was the practice relative to taking azimuths on this trip?

A. The practice? [2271]

Q. Yes.

A. It was the captain's standing orders to take azimuths on every course, if possible.

Q. Now, at the time that the ship was swung off West Point, was a powder boat in the immediate vicinity?

Mr. Ryan: That is objected to as leading.

Mr. Long: It is leading, but I don't know how else to ask him.

The Court: Try to avoid leading questions.

Q. (By Mr. Long) What other boat was around there, Mr. Lawton, if you know?

A. There was a powder boat.

Q. Where was it?

A. It was about abreast of No. 2 hatch.

Q. How big a boat was it?

A. It was a very small boat. I cannot say.

Q. Was it steel or wood?

A. A wooden ship.

Q. Did any of the top hamper or running gear get up as far as the bridge? Just tell us what you saw.

A. The ship was up very low in the water. I don't know just how high. I am sure that it didn't come up to the bridge. In fact, I don't think that it came up to the top of the deck.

(Testimony of James B. Lawton.)

Q. Now, after you finished your duties in the pilot house where did you go?

A. I went down to assist the chief mate in stowing the dynamite.

Q. Did you see the ships then—did you see powder boats, or this powder boat then? [2272]

A. Yes, I did, but my duties took me inside of the shelter deck most of the time from then on.

Q. How big was this powder boat; can you give us an idea?

A. The length?

Q. Yes.

A. Fifty or sixty feet; no more than that, I don't think.

Q. Now, at the time that you had finished—or at the time—strike that. At the time that the master and the second officer had finished taking azimuths, had the second powder boat arrived, or was it alongside, or just tell us when the change was made, if you recall?

A. Well, I don't recall that. The second powder boat arrived a little later after they got through with the azimuths.

Q. Now, Mr. Lawton, what watch did you as third officer of the "Denali" stand?

A. My watch was from 12:00 midnight to 6:00 A. M. in the morning, and from 4:00 A. M. until—and from 4:00 P. M. in the afternoon until 6:00 P. M.

Q. And how many hours out of each twenty-four were you on duty?

(Testimony of James B. Lawton.)

A. I was on duty eight hours a day.

Q. And with what senior officer—with what senior watch officer did you stand your watch?

A. Captain Obert, the pilot.

Q. What were the second mate's hours of duty—what watch did he stand?

A. The second mate stood from 6:00 A. M. in the morning until 8:00 A. M., and from 6:00 at night to midnight. [2273]

Q. How many hours a day did he stand watch?

A. He stood eight hours, the same as myself.

Q. Now, Mr. Lawton, during the voyage of the "Denali", on the afternoon of the 16th—on the afternoon and evening what time did you first come on on that day—on the 16th?

A. On the 16th?

Q. Yes.

A. Oh, I imagine I came up on the bridge around 3:00 o'clock.

Q. And what time did you go on duty?

A. I went on duty at 4:00 o'clock.

Q. What did you do between 3:00 and 4:00 o'clock?

A. I came up on the bridge to see if I could get an azimuth and checking some stuff around the ship.

Q. And during the voyage on the 16th, 17th and 18th, while you were on watch, how did the ship make her courses?

(Testimony of James B. Lawton.)

A. She made all of her courses very good.

Q. Were her courses laid on the chart magnetic?

A. Yes, sir.

Q. Did you take any bearing on the ship to fix off various points or lights?

A. We took quite a few bearings, whenever we could—whenever we could get one.

Q. What did they indicate, if anything, as to whether the vessel was making her courses good?

Mr. Ryan: That is objected to unless it is shown what bearings the witness took. He said that he took whatever he could. It is not shown that he qualified to give any inference that he could take any bearings. [2274]

The Court: Both objections together are sustained. However, if counsel desires, he can inquire further as to any specific bearings which this witness took.

Mr. Long: I will have to use this log book for that purpose. Do you want me to go into that now, Your Honor, at this time?

The Court: No. Do that next week. The proceedings in this case are adjourned until next Tuesday, November 9th, at ten o'clock in the forenoon.

(Whereupon an adjournment was taken at 4:27 o'clock P. M., November 5, 1937, to 10:00 o'clock A. M., November 9, 1937.) [2275]

(Testimony of James B. Lawton.)

November 9, 1937,
10:25 o'clock A. M.

Court convened pursuant to adjournment;
All parties present.

The Court: Are there any other *ex parte* matters or matters upon agreement to come before the Court? If not, you may proceed with the case on trial.

Mr. Long: Mr. Lawton, take the stand.

The Court: You may resume the stand, Mr. Lawton.

JAMES B. LAWTON,

resumed the stand for further examination.

Further Direct Examination

By Mr. Long:

Q. Mr. Lawton, on the evening of May 18th what time did you go up on the bridge?

A. I went up on the bridge about fifteen minutes to twelve.

Q. At what time that evening were you supposed to go on duty?

A. Midnight—12:00 o'clock.

Q. When you arrived on the bridge who was present?

A. The second mate and the captain.

Q. That is Mr. Larson, the second mate, and Captain Healy?

A. Yes, sir.

(Testimony of James B. Lawton.)

Q. When did Pilot Obert come on watch—come onto the bridge? [2276]

A. Captain Obert came on the bridge approximately the same time that I did.

Q. Now, just tell us what occurred while you were changing watch there, please,—what you did.

A. About a quarter to twelve I had a short conversation with the second mate. He pointed out a light on our starboard beam, which he told me was Triple Island Light; that she would be abeam shortly after midnight, and that he had taken a four point bearing at the time of the log and noted it in the log book, and he took me over and showed me in the log book just exactly what he had done—how he had entered it.

Then I went into the chart room, looked over the charts and the waters that we were going through on our coming watch; looked at the characteristics of the different lights; noted the highlands and high points on Dundas Island; reefs and rocks, Prince Lebo Island, and all dangerous navigation.

Q. Now, was there any course laid down on any chart in the chart room, Mr. Lawton?

A. Yes. There was a chart laid down.

Q. You mean a course laid down? You said, “a chart laid down”.

A. Yes, sir. There was a course laid down.

Q. Now, how many charts, do you recall, were on the chart table covering these waters when you came on watch?

(Testimony of James B. Lawton.)

A. Well, there were several.

Q. Showing you Claimants' Exhibit A-10, I will ask you if this chart was on the chart table at the time?

Mr. Ryan: I object to that as leading, and may I [2277] ask that counsel be directed not to lead the witness during this examination? The witness' recollection as to what charts were there and what they show has not yet been exhausted, and here he has been led to a particular chart.

The Court: As applied to this question the objection is overruled.

Mr. Long: Read the question.

(Question read as follows:

“Showing you Claimants' Exhibit A-10, I will ask you if this chart was on the chart table at the time?”)

A. Yes, I recognize this chart as being one on the table at that time.

Q. What other chart was there, if you recall?

A. There was a large scale chart of Caamano Passage.

Q. Do you know the number of that chart?

A. Yes, I do know the number of it.

Q. What was it? What is the number of it?

A. The number of it is 2828.

Q. Showing you Petitioner's Exhibit 33, I wish you would examine that and tell me what that chart is, if you know, and whether or not you saw it that night (handing chart to witness)?

(Testimony of James B. Lawton.)

A. Well, this is a large scale chart of the particular waters that we were in.

Q. Do you recall the course that the vessel was on at the time that you came on watch at 12:00 o'clock?

A. Yes, I do.

Q. What was that course, by standard compass?

A. By standard compass—the standard compass course was [2278] Northwest $\frac{1}{4}$ North.

Q. Now, were there any—I will strike that. What course lines, if any, were laid down on Chart 2828 when you came on watch?

A. There was a magnetic course laid right through the middle of Caamano Passage.

Q. Do you recall what that course was?

The Court: May I interrupt you there, Mr. Long?

Mr. Long: Yes, Your Honor.

The Court: Are you asking that question with respect to the identical chart which he now holds in his hand, or with respect to some other chart?

Mr. Long: With respect to Chart 2828, which he testified was in the chart room at that time.

What was the question again? Read the question, Mr. Reporter.

(Answer and question read as follows:

“A. There was a magnetic course laid right through the middle of Caamano Passage.

Q. Do you recall what that course was?”)

A. Yes, sir. The course was North by West $\frac{1}{8}$ West.

(Testimony of James B. Lawton.)

Q. By which chart—I will strike that. Mr. Bogle has called my attention to one thing that should be cleared up. Mr. Lawton, in showing you Petitioner's Exhibit 33, I will ask you if this particular chart was on board the "Denali", or a copy of it, or a chart just like that, just so that the record will be clear?

A. No. This particular chart was not on board, but one identical to this. [2279]

Q. Now, at 12:00 o'clock midnight what was done, Mr. Lawton, with reference to the navigation of the ship?

A. At 12:00 o'clock midnight the watch at the wheel was relieved. The man coming up to the wheel brought the reading of the log along with him.

Q. And what was done with it? Just tell us.

A. The second mate took the time, compared the courses on both compasses, and entered the log in the ship's log book.

Q. Now, when you speak of "the log", what do you mean? What do you mean—what log?

A. I mean the pilot house log book.

Q. You spoke of reading the log. What do you mean? You said about the man bringing the reading of the log along with him—bringing it up. You said the man coming up to the wheel brought the reading of the log along with him. Now, what log did you mean?

A. The log at the stern of the ship.

Q. The patent log or the taffrail log?

(Testimony of James B. Lawton.)

A. Yes, sir; the taffrail log.

Q. What time then did you actually go on duty, Mr. Lawton?

A. At midnight.

Q. Now, when did the second officer and Captain Healy leave the bridge—approximately?

A. The captain left the bridge shortly before midnight, and the second mate shortly after midnight.

Q. Now, did you take any bearings after coming on watch yourself?

A. At 12:00 o'clock I had the bearing board and was standing by the window, on the starboard side, waiting to [2280] take a bearing on Triple Island Light when it was abeam of the ship.

Q. And did you take that bearing?

A. Yes, I did.

Q. At what time?

A. I took the bearing at 12:06, when the light was in line with the two sights on the bearing board, and the ship was right on her course.

Q. Was the log read at that time? When I say, "was the log read", I mean the taffrail log or the patent log.

A. About a half a minute to a minute before the light was actually abeam I blew the whistle—my pocket whistle—two times. I blew it two times, indicating that the man on watch should read the log.

Q. And then what happened?

(Testimony of James B. Lawton.)

A. And approximately half a minute later the light was abeam. I noted the time; told the pilot that the light was abeam. And when the man brought the log up—the reading of the log, I figured the difference between that reading and the reading when the Triple Island Light was on the four points.

Q. What was that distance, do you recall?

A. Yes. The distance was ten and a half miles, which I told the pilot.

Q. And what did that calculation give you with respect to the position of the vessel?

A. It told us by the log that we were ten and a half miles off of Triple Island Light.

Q. All right. Now, after you had fixed your approximate position off Triple Island Light by that method, was [2281] there any change of the course made, or just tell us what the pilot did, or what you did.

A. The pilot gave the man at the wheel—the helmsman—orders to swing the ship to the right or eastward.

Q. And on what course? What course did he give you?

A. He didn't give me any course.

Q. Just tell us what happened there while the ship was being changed.

A. The pilot said to me, "Go up on top and put the ship——"

(Testimony of James B. Lawton.)

Q. (Interposing) What do you mean, "up on top"?

A. I mean on the deck, right above the pilot house, where the standard compass is.

Q. All right.

A. To go up there and put the ship on North $\frac{3}{4}$ West by the standard compass.

Q. Now, just tell us how you did that.

A. Well, the standard compass is right over the compass down in the wheel house, and between the two compasses is a brass speaking tube which we use to give orders to the man at the wheel, or which the man at the wheel can use to speak up to us. The ship at that time was swinging nicely to the right. When she had one point to go to the course that I wanted on the standard compass I sung out to the man at the wheel that he had one point to go from where he was actually at then. When she was half a point away from the course, and she still had half a point to come up to her new course, I sung out, "Half a point more to go before you are on your course".

Q. Did you receive any reply?

A. Yes. The man at the wheel repeated each time that I sung [2282] out to him.

Q. All right.

A. And when we had a quarter of a point to go I sung out once more. By that time he had eased the ship's head up so that she was swinging very slowly coming up to her course.

(Testimony of James B. Lawton.)

Q. All right. Did he set her on the course?

A. When she got right set on North $\frac{3}{4}$ West on top I took out my whistle and I tapped on the speaking tube, which can be heard very distinctly in the wheel house. I kept tapping on the tube, indicating that on the standard compass I had her right North $\frac{3}{4}$ West—on the standard compass.

Q. I see. Is that the customary manner and practice of setting a vessel on a course?

A. That is the customary manner on all American ships.

Q. All right. What did you do before you came down then from the standard compass?

A. After that, well, I stepped away from the compass for a few minutes— a few moments—and I looked over on the starboard side and noted that Triple Island Light had went forward of the beam again about three points.

Q. And what did that indicate?

A. It indicated that we were around on our new course. She was good and steady then.

The Court: Kindly read that answer again, Mr. Reporter.

(Answer read)

A. So I looked back into the standard compass again and she was perfectly steady on North $\frac{3}{4}$ West. I rapped and kept [2283] rapping as long as she set right steady on that course. I stepped away from the compass again for a minute to give the

(Testimony of James B. Lawton.)

ship a chance to settle down good to her new course and——

Q. (Interposing) Then what did you do?

A. Then I looked in the compass again—the standard compass—and when she was steady on North $\frac{3}{4}$ West I again rapped on the speaking tube for a few minutes, indicating to them down below that she was right steady on North $\frac{3}{4}$ West on the standard compass.

Q. All right. Then what did you do after you steadied her on that course?

A. I went down to the pilot house then and told the pilot—I said to the pilot, “She is right on North $\frac{3}{4}$ West, sir”, and he said, “All right”. He said, “Do the same on this compass and mark both——”

Q. (Interposing) What do you mean by “this compass”?

A. The compass in the wheel house.

Q. Go ahead.

A. And he said, “Mark the both courses down in the log”, which I did.

Q. So that when your standard new course was marked North $\frac{3}{4}$ West what was the reading of the steering compass?

A. The reading of the steering compass was also North $\frac{3}{4}$ West.

Q. Now, did the vessel continue on that course, and if so, for how long before you did anything else in connection with her navigation?

(Testimony of James B. Lawton.)

A. The ship continued on that same course until one o'clock. Triple Island Light then came abeam on this new course. [2284]

Q. And what did you do at that time?

A. I took a beam bearing on the light, the same as I had previously done at 12:06. I blew the whistle for the man to read the log, and went up on top and compared the compasses again.

Q. What course was the ship on at that time by standard compass?

A. She was on North $\frac{3}{4}$ West, the same as the other course.

Q. Now, when you were up reading—or comparing the compass—comparing the steering compass after the light came abeam the second time on the new course, did you observe any land, and if so, what?

A. When I was up checking—comparing the courses——

Q. (Interposing) Just finish your answer.

A. I picked up the high lands of Dundas Island on the starboard bow. [2285]

Q. And you say that was about 1:00 o'clock?

A. Yes, about one.

Q. What did you do after that?

A. I went down below and told the pilot that I saw that land.

Q. Did you see any other land shortly thereafter?

(Testimony of James B. Lawton.)

A. Yes, I did, at 1:30 we picked up Zayas Island.

Q. How did Zayas Island bear at 1:30?

A. She bore ahead, with most of the island on the port bow.

Q. What course were you on at that time, by standard compass and steering compass?

A. We were on North $\frac{3}{4}$ West.

Q. What did the pilot do at 1:30, when you observed Zayas Island?

A. Well, Zayas Island was too much ahead, so the pilot hauled the ship one-eighth of a point to the right, to put Zayas Island——

Mr. Ryan: (Interposing) May I make an objection to that question, in view of the way the answer is beginning. I object to it on the ground that this is evidently an attempt by the Petitioner to prove that the entries in its official deck log book are false. That log book is required by statute of Congress to be kept for the protection of the cargo and the passengers on a ship. The shipowner is bound by the entries that are made in the log book of the ship, and is not at liberty after entries have been made, and at a late stage of litigation, to come in and try to prove that those entries are false.

So I object on the ground that the entries made in the official deck log book of this ship are admissions [2286] which are binding and conclusive on the petitioning ship owner, and that the Court should not entertain oral evidence of this sort by a man who apparently made those entries, to take the

(Testimony of James B. Lawton.)

position that they are false, for the purpose of injuring the owners of the cargo on the ship.

The Court: The objection is overruled.

Mr. Ryan: Exception.

The Court: Exception allowed.

Mr. Pellegrini: I move that the testimony given so far by the witness with respect to changing courses, entries of which are not in the log book, be stricken.

The Court: The motion is denied.

Mr. Ryan: We join in that motion.

The Court: Yes; all Claimants join in the motion, as I understand it, and the motion is denied. Exception allowed.

Q. (By Mr. Long) Read the question. (Last question read as follows:

“Q. What did the pilot do at 1:30, when you observed Zayas Island?

A. Well, Zayas Island was too much ahead, so the pilot hauled the ship one-eighth of a point to the right, to put Zayas Island——”)

Just go ahead.

A. To put Zayas Island wider on the port bow of the ship.

Q. Just tell us what happened.

The Court: Pardon me; will you inquire of this witness what he means by that term, putting the island wider on his port bow. [2287]

Mr. Long: Yes; I will do that.

(Testimony of James B. Lawton.)

Q. (By Mr. Long) What do you mean, Mr. Lawton, when you refer to putting the island wider on your port bow?

A. I mean when we picked up the island it was bearing mostly ahead of the ship, and we hauled the ship's head to the right, which put the island more to the left.

The Court: You mean at a greater distance off?

The Witness: Yes, sir.

Mr. Long: I think we can illustrate that with a pencil, possibly.

Q. (By Mr. Long) Would you show the Court what you mean, using my pencil here, and this chart, what you mean by wider on the port bow?

A. When we picked up Zayas Island it was like this (illustrating), too much ahead of the ship, so the pilot hauled the ship to the right, or eastward, this way, to set Zayas Island more over on the port side of the ship.

Q. All right. Now, just tell us how long you ran on that heading, approximately.

A. We ran on that heading approximately ten minutes.

Mr. Ryan: May it be understood that the objection that I made on various grounds shall stand to all this line of testimony, and that there may be an exception noted to the adverse rulings?

Mr. Long: That is all right.

The Court: Yes.

Mr. Long: That will save time, Your Honor.

(Testimony of James B. Lawton.)

Q. (By Mr. Long) Go ahead, Mr. Lawton.

A. We ran on that heading for about ten minutes. [2288]

Q. Tell us what occurred; what did you observe?

A. We again observed Zayas Island to be too much right ahead of the ship.

Q. What did that indicate to you, if anything, as to the action of the vessel?

A. It indicated very clearly that the ship was being set to the westward by the current.

Q. How long did you run on that second heading, after you changed the second time one-eighth to the right, approximately?

The Court: I do not recall clearly his so stating, as to his second change.

Mr. Ryan: He has not, Your Honor, and I object to it as wholly leading, and in view of my repeated objections to the leading examination of counsel I ask that he be directed to not repeat such leading questions.

Q. (By Mr. Long) Just tell us what was done. Tell us in your own words what was done after that, Mr. Lawton; what you could see and what was done.

A. Well, after we changed twice one-eighth of a point to the right and continued for another ten minutes, Zayas Island again appeared to be right ahead of the ship.

Q. What was done then?

A. The pilot hauled her one-fourth of a point to the right then, putting Zayas Island more over on our port bow, where we wanted it.

(Testimony of James B. Lawton.)

Q. What was the pilot endeavoring to do by those changes to the right?

Mr. Ryan: Objected to on the ground that it calls for speculation. [2289]

Q. Did you know what he was trying to do?

A. Why, certainly.

Q. All right; tell us what he was endeavoring to do by those changes to the right.

A. He was trying to maneuver the ship by looking at Zayas Island, to get in the middle of Caamano Passage.

Q. Tell us what happened after that.

A. We ran that course for about another ten minutes, and Zayas Island started bearing ahead again instead of getting wider on the port bow.

Q. Indicating to you what was occurring?

A. Indicating that we were being set sideways.

Q. Which direction?

A. To the westward.

Q. From what cause?

A. By the current.

Q. About what time was that when this last change of a one-fourth of a point to the right was made, if you recall?

A. It was about ten minutes to 2:00. About 2:00 o'clock, approximately 2:00 o'clock, the pilot hauled the ship another one-fourth of a point to the right, which put Zayas Island—brought her on the port bow where he wanted it.

(Testimony of James B. Lawton.)

Q. Up until that time, Mr. Lawton, how many changes to the right had the pilot made, from 1:30 or thereabouts?

A. He had made four changes to the right.

Q. At 2:00 o'clock do you know what the vessel's heading was?

A. Yes. At 2:00 o'clock I compared compasses.

Q. Who compared the compasses? [2290]

A. I did.

Q. Very well. What was the ship's heading by standard compass?

A. She was heading on the standard, north, and on the steering compass north, also.

Q. In other words, the two compasses were the same on that heading?

A. Yes; they were the same.

Q. How long did you steer this heading of North?

A. Well, approximately 20 minutes.

Q. Tell us what occurred then?

A. Well, around 2:20 or 2:25 Zayas Island, instead of getting wider on our bow, had pulled ahead again.

Q. Let me interrupt you. When you compared the courses and observed the vessel was on North, did you have any conversation with Capt. Obert relative to the entry of that change in the log book?

Mr. Ryan: May I have the answer to the last question read? (Answer read.)

(Testimony of James B. Lawton.)

Q. Did you have any conversation with Capt. Obert relative to the entry of those changes in the log book?

A. Yes, I did.

Q. What was said? What did he say?

A. I asked the pilot if he wanted to enter those changes, and he said no.

Q. When the vessel was on North, at about 2:00 o'clock, what could you see with reference to any land?

A. Well, we could see Zayas Island and Dundas Island.

Q. What about the channel between the two islands; could you see that? [2291]

A. Yes. The channel was opening up pretty good.

Q. How did the ship appear to be heading with relation to the center of the channel between Dundas Island and Zayas Island?

A. At 2:00 o'clock?

Q. At 2:00 o'clock, yes.

A. Well, she appeared to be heading well towards the middle of the channel.

Q. You say she ran that North course about 20 or 25 minutes, and then what happened?

Mr. Ryan: Just a minute; he didn't say anything about 25 minutes. He said 20 minutes. I would like to keep the record straight.

Mr. Long: All right.

(Testimony of James B. Lawton.)

Q. How long did she run the North course? I misunderstood you?

Mr. Summers: He has already testified to that.

Mr. Ryan: He has already testified to that, and I object as repetitious.

The Court: I will let him testify to it again, because it didn't stay in my mind if he did testify, and I would like to hear it.

Q. How long did you run on this North course after 2:00 o'clock?

A. I said we ran approximately 20 minutes.

Q. Tell us what then occurred.

A. Zayas Island, instead of being wide on the port bow, which would indicate we would clear it and the reef, had brought ahead again.

Q. What happened then? [2292]

A. The pilot at that time gave the order to the man at the wheel to port his helm.

Q. Which way would that swing the ship's head?

A. That would swing the ship's head to the right, or to the eastward.

Q. Go ahead and tell us what occurred there.

A. The pilot was looking ahead at Caamano Passage, and when he had the head of the ship lined up with the middle of the Passage, from our angle of approaching it, he gave the orders to the man at the wheel to steady the ship, which he did.

Q. Mr. Lawton, at 2:20 or thereabouts, when this change to the right was made concerning which

(Testimony of James B. Lawton.)

you have just testified, did Capt. Obert give the helmsman any magnetic course to steer?

A. No; he didn't give him any course.

Q. What were his orders, again, so that I get that clear.

A. How do you mean?

Mr. Ryan: That is objected to. He has already testified to that.

The Court: I believe that is unnecessary. It seems clear.

Mr. Long: I think so, but I wanted to get it clear.

Q. (By Mr. Long) Go ahead and tell us what happened when the pilot told him to steady the ship; then what was done?

A. Well, the man at the wheel steadied the ship up.

Q. What did you do?

A. After she was steady I checked the courses.

Q. How did the ship appear to be heading at that time, [2293] after steadying up on that change, with relation to Dundas Island and Zayas Island, and the channel between the two islands? Just tell us in your own words just how she looked to you.

A. From the angle that we were approaching the channel it seemed that we were headed directly through the middle of the passage or channel.

Q. What was the visibility at that time, Mr. Lawton; what could you see?

A. Well, on the beach line on both Dundas Is-

(Testimony of James B. Lawton.)

land and Zayas Island there was the morning haze, making——

Q. (Interposing) After this change to the right had been made, then what did you do?

Mr. Ryan: I didn't get the last word of the last answer. May I have it? (Last answer repeated.)

Mr. Long: I beg your pardon; I did not hear that.

Q. (By Long) Just finish your answer.

A. Making the air sort of deceiving.

Q. Just tell us what you did, Mr. Lawton.

A. I checked the compasses.

Q. By what method? What did you do?

A. I compared the compasses by the usual method.

The Court: Mr. Long, you haven't established the time.

Mr. Long: I am just coming to that.

Q. About what time was this, Mr. Lawton, that you compared the compasses, after this change to the right?

A. Approximately 2:25.

Q. What was the heading on the standard compass at that time?

A. At that time when I compared the compasses the heading [2294] on the standard compass was North $\frac{3}{4}$ East.

Q. What was the heading on the pilot house compass at that time?

A. The same; North $\frac{3}{4}$ East.

Q. North $\frac{3}{4}$ East?

(Testimony of James B. Lawton.)

A. Yes, sir.

Q. This was about 2:25, you say?

A. Yes, sir.

Q. What occurred subsequent to 2:25? I will strike that question. Mr. Lawton, why did you check the compasses after this turn to the right?

The Court: You mean after the last mentioned turn to the right?

Mr. Long: That is correct; after the last one I have just mentioned, or haul to the right?

The Witness: I checked the compasses because I expected to enter them in the log book.

Q. Did you enter them in the log book?

A. No. I asked the pilot if I should, and he said no, that we would wait.

Q. Did he tell you what he expected to do, as to when you should make the entry, etc.?

A. Yes; he told me——

Mr. Ryan: (Interposing) That is objected to. I just protest against leading questions.

Mr. Long: Yes; it is leading.

The Court: State the objection and the Court will rule.

Mr. Long: I will put it another way.

Q. (By Mr. Long) What did the pilot say when you asked him [2295] as to whether or not you should enter this change in the log book, this last change in the log book?

A. He said no, that we would wait until we got

(Testimony of James B. Lawton.)

further up the channel, and make a notation on the side of the log book.

Q. A notation to what effect?

A. Of the strong tide, and the various courses we had steered already.

Q. What happened after 2:25, Mr. Lawton, when you compared the compasses as you have stated?

A. At 2:37, or shortly before, the pilot said to me, "Take the bearing board and take an abeam bearing on the South end of Zayas Island, and also get the log."

Q. Did you do that?

A. Yes; I did that.

Q. What was the degree of your visibility in looking at Zayas Island to take this abeam bearing? Just tell us how it looked to you.

A. Well, it wasn't clear, by any sight. I had to wait until we actually got up to the end of the island, looking out over the water in the background before I could make out the end of the island.

Q. How about the main portion of the island?

Mr. Ryan: Just a minute; I didn't hear that answer. (Answer read.)

Mr. Long: Now read my last question. (Question read.) Strike that.

Q. (By Mr. Long) What was the visibility as to the main portion of the island at that time, Mr. Lawton? Could you see it, or otherwise? [2296]

A. Zayas Island, you mean?

(Testimony of James B. Lawton.)

Q. Yes, sir.

A. Why, I could see the tops of some of the trees, and see a line of haze along the beach, along some of the trees.

Q. How about Dundas Island at about that time?

A. The south end of Dundas Island had quite a little haze along the shore line.

Q. How did the vessel appear to be heading at that time, with relation to the channel between the two islands, and by the channel I mean Caamano Passage?

A. Well, from our angle of approaching the channel she appeared right in the middle.

Q. And what was your heading at that time?

A. Our heading was North $\frac{3}{4}$ East.

Q. Did you enter that abeam bearing in the log book?

A. Yes, I did.

Q. Was the log read?

A. The log was read, yes.

The Court: What log?

Mr. Long: The patent log.

The Witness: The patent log at the stern of the ship.

Q. (By Mr. Long) Tell us what happened next, Mr. Lawton? What did you do next, or what did you see next?

A. I entered the abeam bearing on the south end of Zayas Island and went back to where I was

(Testimony of James B. Lawton.)

standing on watch and lookout. Almost immediately I picked up a light, a little on the port bow.

Q. You say a little on the port bow; about how much on the port bow, if you remember?

A. Well, a point or point and a half. [2297]

Q. Do you know what light that was?

A. Yes, I do.

Q. What light was it?

A. It was Tree Point Light.

Q. During the time from 1:30 on to this point, Mr. Lawton, did you know about this reef being off the southeasterly end of Zayas Island?

A. Yes, I did know about it.

Q. Did the pilot know about it?

A. Yes, he certainly did.

Q. After you picked up Tree Point Light what happened?

A. Well, in a couple of minutes we stranded, shortly after I picked up the light.

Q. How did the vessel hit?

A. Oh, she just seemed to slide to a stop. I would say easy, very lightly.

Q. How did the vessel appear with relation to the channel after she hit? Or at the time she hit?

A. She appeared to be right in the middle of the channel.

Q. What was her heading after that? Did you look at the compasses after she had hit?

A. Yes, I did.

Q. What was the compass reading?

(Testimony of James B. Lawton.)

A. The compass reading was North $\frac{1}{2}$ East.

Q. On which compass?

A. On both compasses.

The Court: Mr. Long, will you have the witness point out Tree Point Light now?

Mr. Long: Yes; I will do that.

Q. Would you point out to the Court on chart No. 2828 Tree [2298] Point Light?

A. Right there (indicating).

The Court: The witness has done so on Petitioner's Exhibit No. 33. You may proceed.

Q. By the way, how did Tree Point Light appear when you first saw it? Not the bearing, but the visibility of it.

A. It appeared like any other light would. You could just see a light, the flash of the light.

Q. Did you see the flare or the light itself?

A. I saw the light itself.

The Court: At this point we will take a five-minute recess.

(Recess.) [2299]

The Court: You may proceed.

Q. Mr. Lawton, approximately how long before the vessel stranded did you sight Tree Point Light?

Mr. Ryan: That is objected to. He has already testified. He said, "A couple of minutes".

The Court: Objection overruled. Somehow it did not stick in my mind, Mr. Ryan.

Mr. Long: If he answered it, I didn't hear it.

The Court: He may answer.

(Testimony of James B. Lawton.)

Q. (By Mr. Long) Just answer it.

A. Well, it was a couple of minutes.

Mr. Ryan: What was the answer?

The Court: He said that it was a couple of minutes.

Q. (By Mr. Long) Did you take the time when you sighted Tree Point Light on the ship's chronometer?

A. No, I did not.

Q. Now, from approximately 1:30 A. M. until the time of stranding what was the pilot doing?

A. The pilot was piloting the ship.

Q. By what means?

A. By his eye sight and land falls on Zayas Island.

Q. What do you mean by "land falls", Mr. Lawton?

A. Well, marks of land.

Q. From 1:30 A. M. until the time of the stranding was Zayas Island continuously visible?

Mr. Summers: That is leading.

Mr. Ryan: We object to that on the ground that it is leading.

The Court: Yes, it is.

Mr. Long: Yes, I know that it is leading. I will [2300] ask it in another way.

Q. (By Mr. Long) From 1:30 A. M. until the time of the stranding what land could you see? Just tell us that in your own words.

(Testimony of James B. Lawton.)

Mr. Summers: I object to that as leading and suggestive.

Mr. Ryan: I object to that. He did not say that he could see land all the time.

Mr. Long: Well, I will bring it out.

Mr. Ryan: I object to that. Counsel has asked leading questions time and time again, and this witness is the officer on watch on the ship—a licensed officer on the ship—and I most strenuously protest to his being led around like this by his own counsel.

The Court: The objection is overruled.

Mr. Long: Read the question.

Mr. Ryan: Exception.

The Court: Exception allowed.

(Question read as follows:

“From 1:30 A. M. until the time of the stranding what land could you see? Just tell us that in your own words”.)

A. From 1:30 until the time that the ship stranded we could see Dundas Island and Zayas Island at all times.

Q. From 1:30 until the time of stranding, Mr. Lawton, what, if any, compass or magnetic courses did the pilot give the quartermaster?

A. The pilot did not give any courses.

Q. Where was the pilot stationed during that time? Where did he stand?

A. The pilot stood on the port side of the pilot house, with [2301] his head out of the window.

(Testimony of James B. Lawton.)

Q. Was the window opened or closed?

A. Well, it was open.

Q. During that period was the pilot steering any magnetic courses?

A. No, he was not.

Q. Or were any magnetic courses give you by the pilot for entry in the book?

A. No.

Q. During that time, Mr. Lawton, from 1:30 A. M. until approximately 2:25, and even on up to the time of the stranding, what did you observe as to the action of the vessel? That is the end of my question. What did you observe?

A. Will you read that question again, please?

(Question read)

A. Why, I observed, by looking at Zayas Island, that the ship was being set to the westward.

Q. From what cause?

A. By the current.

Q. During that period did the pilot make any comment about the ship being set one way or the other by the current?

A. Yes, he did.

Q. What did he say, in your own words, or in substance?

A. Well, he said that the ship was being——

Mr. Ryan: (Interposing) That is objected to on the ground of hearsay, and on the ground that no proper foundation was laid in the pilot's testimony contradicting the pilot, if that is what counsel is

(Testimony of James B. Lawton.)

trying to do—trying to impeach the pilot's veracity.

[2302]

Mr. Long: What was that objection?

The Court: Mr. Ryan is objecting on the ground that it is hearsay, as I understood it, and that no foundation has been laid for impeachment. Will you read the question again, Mr. Reporter?

(Questions and answers read as follows:

“Q. During that period did the pilot make any comment about the ship being set one way or the other by the current?

A. Yes, he did.

Q. What did he say, in your own words, or in substance?”)

Mr. Long: I think, Your Honor, that is a comment made in the course of business by a man in charge of navigation, to this man engaged in the same kind of work, and for that reason, I think it is permissible.

The Court: If it was said in the way of an order given to him, that would be proper, but not any afterthought or reflection.

Mr. Long: I think that is correct. I will ask him.

Q. (By Mr. Long) At any time during the time that the pilot hauled the vessel to the right, concerning which you testified, did he make any comment, or did he say anything with respect to the vessel being set to the westward by the tidal current?

Mr. Ryan: That is objected to as leading, and also on the ground that it is hearsay and, further, on the

(Testimony of James B. Lawton.)

ground that there has been no proper foundation laid for impeachment by the pilot's testimony.

[2303]

The Court: Objection overruled.

Mr. Ryan: Exception.

The Court: Exception allowed.

Q. (By Mr. Long) Just tell us.

A. Yes, he did. At 2:25 the pilot said to me that the current was setting the ship to the westward much stronger than he had figured on.

Q. And at the time of making that comment did he make any change or give any order to the quartermaster in connection with that comment?

A. Well, we had just hauled the ship.

Q. Which way?

A. To the right, or eastward.

Q. Now, what did you do, Mr. Lawton, immediately after the ship struck?

A. I noted the time.

Q. What time was it?

A. 2:44.

Q. And what else occurred right then?

A. The pilot stopped the ship and told me to get the captain.

Q. And what did you do?

A. Before I could get down to get him, he came running in the pilot house in his underwear.

Q. What was said, and what occurred right then and there?

(Testimony of James B. Lawton.)

Mr. Ryan: That is objected to, so far as what was said is concerned, on the ground that it is hearsay.

The Court: The way that it has arisen, the objection is sustained.

Mr. Long: Very well, Your Honor.

Q. (By Mr. Long) What did the captain do?

[2304]

A. The captain came in the wheel house and he said——

Mr. Ryan: (Interposing) That is objected to on the ground that it is hearsay.

The Court: Just state what he did, if anything.

Q. (By Mr. Long) Just state what he did, Mr. Lawton. You cannot say what the pilot said, unless it was in the course of some order given or something to that effect——

Mr. Ryan: (Interposing) Now, please, don't suggest answers to the witness, Mr. Long, and I object to that.

The Court: Mr. Ryan——

Mr. Ryan: (Interposing) I will withdraw that.

The Court: Mr. Ryan—Mr. Ryan, the Court is addressing you right now. The Court has previously warned all counsel in this case that no heated evidence of temper or other heated excitement was going to be tolerated, and I mean it now, and all the rest of the time during the progress of this trial. Don't you in the future violate that direction of the Court, and if you do the Court is going to hold you

(Testimony of James B. Lawton.)

in contempt of this Court. All of the rest of the proceedings in this trial have got to be conducted in an orderly and respectful manner in this courtroom. I have got to hear this evidence and consider it, and that is what I want to do.

Mr. Ryan: I am very sorry——

The Court: (Interposing) Proceed.

Mr. Ryan: It was not in that spirit——

The Court: (Interposing) Proceed. [2305]

Mr. Ryan: That was not the thought——

The Court: (Interposing) Proceed.

Q. (By Mr. Long) You just tell us, Mr. Lawton, what the captain did. You are not allowed to say what he said. Just what he did when he came on the bridge.

A. Well, what he did was pertaining to what he said. I don't know how to answer that.

Q. Did he give any orders?

A. He asked the pilot—he said, "What is the matter?"——

Mr. Ryan: (Interposing) Now, please. That is objected to on the ground that it is hearsay, and the Court has ruled on it.

The Court: You can state any orders that he gave——

Q. (By Mr. Long) Just what orders——

The Court: (Continuing) —or any action that he took.

Q. (By Mr. Long) Just what action did he take and what orders did he give, Mr. Lawton?

(Testimony of James B. Lawton.)

A. It is hard to state it that way.

Q. Well, just do the best you can.

A. He asked the pilot what was the matter, and the pilot said, "I don't know. We are in the middle of the channel". The captain then looked around—took his bearings and said, "Yes, it certainly looks like we are".

Q. What did you do then? Was the captain dressed when he got there?

A. No. The captain was undressed—almost.

Q. All right.

A. Well, then, the chief mate came up to the wheel house, Mr. Cleasby, and the captain told me to go back and get [2306] him the wireless operator and tell him to get ready for immediate duty.

Q. Then what did you do?

A. I followed out his orders. I went back and called the wireless operator and told him that he should get on deck right away, up to the wireless shack.

Q. What, if anything, was done, Mr. Lawton, by the captain, or under his direction, with reference to any engine movements?

A. The captain backed the ship several times, trying to back her off the reef.

Q. Tell us, did the ship move as a result of that engine movement?

A. The ship did not move. She was stuck there.

Q. All right. Now, what did you do after the captain told you to get the wireless operator?

(Testimony of James B. Lawton.)

A. I did a lot of things——

Q. (Interposing) Just in chronological order as near as you can remember them.

A. One of the first things that I remember that I did was that I was told to go and take soundings from No. 2 hatch around both sides of the ship to the stern.

Q. And did you do that?

A. Yes. I took a sailor with me, and that was done.

Q. And how was that done?

A. For taking soundings in shallow water we have a handy little lead and line.

Q. And what did you do with the lead and the line?

A. We dropped the lead over the side of the ship.

Q. Did you take those soundings by that method? [2307]

A. Yes, sir.

Q. Now, taking soundings, did you observe the action of the tide and the direction of the tide?

A. Yes, I did.

Q. Tell us what you observed.

A. When I was taking soundings around the stern I could tell by my sounding line that the tide was affecting it.

Q. In what direction, do you remember, Mr. Lawton?

(Testimony of James B. Lawton.)

A. It appeared to be somewhere between South-west and West.

Q. And after you had finished taking the soundings what did you do next?

A. I went up and reported to the captain; told him the depth of the water around the ship, and he told me to take No. 2 lifeboat and No. 4 lifeboat and get them all ready for abandoning the ship.

Q. Tell us what you did then.

A. I got some of the crew—half of the crew—

Q. (Interposing) On which side of the ship, Mr. Lawton, is No. 2 and No. 4 lifeboats?

A. No. 2 and No. 4 lifeboats are on the port side of the ship.

Q. And with reference to Zayas Island and the ship, which side of the ship?

A. The side towards Zayas Island.

Q. Very well. And what did you do then?

A. We proceeded to take the covers off the boats; the strongbacks off the boats; put in the plugs; put the painters out; took the gripes off the lifeboats; swung them out, as we do every week in our fire boat drill. [2308]

Q. All right. And what did you do then after you got your boats ready?

A. The captain wanted the two boats on the port side lowered down to the railing on the next deck.

Q. Mr. Lawton, go right ahead from there.

A. Well, some of the things that I did I cannot remember just as to the time, and so forth.

(Testimony of James B. Lawton.)

Q. Well, we are not worried about the details. Just give us the chronological order of events as near as you can now recall them.

A. Well, the captain told me—I don't know whether it was right then or not—to give the mate a hand in blocking off dynamite caps, and I did that. And around that time, or maybe at that time the ship started to take a port list.

Q. And about—if you remember, Mr. Lawton, how long was this after the ship had stranded at 2:44, when she started to take this port list? Do you recall?

A. Well, I would say half an hour. Maybe a little less than that.

Q. All right. What did you do then?

A. Either the first mate or the skipper told me to go around to the port side of the ship and see that all the port holes were closed tightly so that if she did list over too much she would not take water in the portholes.

Q. I see. Now, when did you go ashore, if you did go ashore, Mr. Lawton, the first time?

A. The No. 2 lifeboat, as I recall it, was the first boat to leave the ship. [2309]

Q. Did you leave in that boat?

A. No, I did not. Eight or ten men left in that boat. I cannot say just who they were.

Q. Very well. What did you do then? From then on until the time that you left the boat, what did you do then, just briefly?

(Testimony of James B. Lawton.)

A. Why, we told the passengers—we had passengers, and we told them to get their clothes ready; that they would have time to pack up and put them in the lifeboats; and we assigned them the lifeboat that they should get into in case we had to leave in a hurry.

Around that time one of the lifeboats from the starboard side of the ship had been ordered to pull over to Zayas Island—to leave the ship—which they proceeded to do. The other lifeboat on the starboard side had a load of men in it. It was in charge of the second mate. I don't know whether the captain told him to come around, or——

The Court: (Interposing) Do not state it then. Do not speculate.

Mr. Long: Do not state what the captain said.

The Court: Do not speculate. Do not say what you don't know.

Q. (By Mr. Long) Do not speculate. Just tell us what you actually saw there at this time, Mr. Lawton.

A. Well, he started out astern of the ship.

Q. From the starboard side?

A. From the starboard side.

Q. Very well.

A. And I heard him holler, and I went back there, and he [2310] said to throw him a line, which I did, and help him alongside of the ship, on the port side of the ship.

(Testimony of James B. Lawton.)

Q. Why was it necessary to throw him a line, if you know?

A. Because the men rowing the boat could not make headway against the tide or current.

Q. Did you observe at that time which way the tide—which way was the direction of the tide?

A. Well, I could see the tide running.

Q. Which way was the tide running—what direction?

A. It was trying to set their lifeboat southwest.

Q. What happened then?

A. They brought their lifeboat underneath the ladder.

Q. On which side?

A. On the port side of the ship.

Q. Very well. What happened then?

A. Some of them boarded the ship again. I am not sure what the reasons were for boarding the ship, except that I saw them passing coffee and a few blankets, and milk and some provisions—milk to make coffee.

Q. What did that boat do after that?

A. Well, they must have been ordered ashore because I saw them pull off for Zayas Island.

Q. And what did you observe? Did you watch them row towards Zayas Island?

A. Yes, I did.

Q. What did you observe—the action of the boat in their efforts in going to Zayas Island?

(Testimony of James B. Lawton.)

A. Oh, I glanced at the boat from time to time, and I noticed that when they left the ship they were headed well up from the end of the island, and when they made [2311] land over there they were right on the tip of the island.

Q. Was the lifeboat being affected any by the current or tide?

Mr. Ryan: That is leading.

The Court: Sustained.

Q. (By Mr. Long) Could you see by the action of the lifeboat how she was making through the water towards Zayas Island?

A. Naturally, from the tide.

Q. Just tell us how it looked—what you saw.

A. He tried to go this way (indicating) and the tide hit him, and he finally had to go this way (indicating).

Q. All right. Now, what did that mean to you or indicate to you—those observations that you made?

A. Well, at the time it didn't indicate—

Mr. Ryan: (Interposing) I object to that on the ground that it is calling for speculation on the part of this witness. He was not in the boat. He does not know of his own knowledge what they were trying to do.

The Court: Objection overruled.

Mr. Ryan: Exception.

The Court: Exception allowed.

Q. (By Mr. Long) Go ahead and tell us what you observed. Was the current setting them in any direction?

(Testimony of James B. Lawton.)

Mr. Summers: That is leading.

Mr. Long: If Your Honor please, I suggest that one counsel make the objections. I cannot listen to both of them. I do not know which one of them is making the [2312] objection.

The Court: Well, I think that that particular question is leading.

Mr. Long: I think it is, too. I cannot explain it to the witness, but I am endeavoring to explain it. I want him to tell us and to give Your Honor a picture of what he saw there. It is difficult to express it to him.

Q. (By Mr. Long) Just tell us what you saw this boat going towards Zayas Island do. What you saw. What was happening? What occurred there?

A. Well, we saw—we noticed a lifeboat heading for one point of Zayas Island, and she could not make that point. She was being set down the island towards the end of the island. [2313]

Q. (By Mr. Long) What was setting her down the island?

Mr. Ryan: May I move to strike out that last answer on the ground that it is the speculation of the witness regarding where somebody on some other boat was trying to head for. He has no knowledge of his own; he was not on the boat at all.

The Court: The motion is denied.

Mr. Ryan: Exception, please.

The Court: Exception allowed.

(Testimony of James B. Lawton.)

Mr. Long: Will you please read the question?

(Last question read.)

Mr. Ryan: I object to that further as calling for a still greater degree of speculation by the witness.

Mr. Long: If he knows.

Mr. Ryan: He knows nothing of his own knowledge. He was not even on the boat, was not in a position to know.

The Court: The question will have to be conditioned further.

Q. (By Mr. Long) Do you know of your own knowledge what, if anything, was affecting the lifeboats moving through the water?

A. Why, yes.

Q. What could you see?

A. Naturally I could see it was the current setting it. There was nothing else that could affect it.

Q. What direction was the current affecting the boat?

A. Setting those lifeboats, those that went ashore, to the southwestward.

Q. What did you do after that yourself, after these boats [2314] left? About what time was that, do you recall?

A. I don't know the time for certain.

Q. You didn't look at a watch—did you look at a watch?

A. No; I didn't have any watch on me.

Q. What did you do then?

(Testimony of James B. Lawton.)

A. All the time the ship was listing more to port.

Q. When did you leave the "Denali"?

A. Well, the third boat pulled off after the ship had listed over quite a bit—

The Court: Now, that makes several times you have said that, and counsel is asking you what you did, and not what you saw as to the ship.

Q. When did you leave the "Denali"? Let us get along to that point.

A. We waited until she got a little bit more of a list, which showed that it was dangerous.

Q. Who do you mean by "we", Mr. Lawton?

A. I mean the remaining men on the ship.

Q. Who were they, what officers?

A. Capt. Healy, Mr. Cleasby, the first mate, one of the engineers, myself, and several members of the crew.

Q. What did you do, and when did you leave; just tell us in your own way, as briefly as you can, what happened then?

A. The Captain decided to stand off the ship a couple of hundred yards and see what was going to happen, so we got into the lifeboat, all of us, and had no more than shoved off from the ship's side when we heard a sort of roar or crash, or something, and the ship immediately straightened up. She had buckled in half [2315] right forward of the bridge.

Q. About what time was this, as near as you can recall?

(Testimony of James B. Lawton.)

A. Well, it must have been around 6:30, I guess.

Q. What happened then; what did you do? Let me ask you this question preliminary to that; at the time the vessel struck at 2:44 what were the weather conditions?

A. At the time she struck?

Q. That is right.

A. Well, at the time she struck the sea was smooth.

Q. Any amount of wind?

A. A slight wind, yes.

Q. Did the weather conditions change that morning, Mr. Lawton?

A. Yes; they did.

Q. Tell us about that.

A. After we stranded it started to blow up a little bit, the sea became rougher until the time we left—well, she wasn't real rough, but it was not smooth by any means.

Q. At the time you left the "Denali" the first time, as you have just described had the Coast Guard Cutter "Cyane" arrived alongside?

A. No; she had not.

Q. What happened after the ship broke in two, as you have described; what did you do?

A. We wanted to stand off, which was the captain's orders—stand off a couple of hundred yards from the ship. He didn't want to go too far away. But we were unable to do so on account of the strong current.

(Testimony of James B. Lawton.)

Q. How did it affect the boat? [2316]

A. We had six men rowing, and we couldn't hold our position. The captain gave orders to drop astern and grab hold of the log-line, which was still streaming.

Q. What log-line do you refer to?

A. The patent log-line.

Q. The taffrail log-line?

A. The taffrail log-line, yes.

Q. Which way was the current running then, Mr. Lawton?

A. Southwestward.

Q. Could you give us any idea as to the force of the current, as you observed it?

A. Well, when we took hold of the log-line I happened to be the one that was holding onto the log-line, and the current was affecting the ship—the lifeboat, I mean—strongly enough so that I couldn't hold onto it alone, I had to ask for assistance.

Q. Which way was the current running, as you observed it, under those conditions, while holding onto the log-line there?

A. Well, I would say it was between southwest and west.

Q. How long did you hang onto the log-line there in that manner?

A. Oh, I don't know the time, exactly, but it must have been around 40 minutes.

The Court: At what time of day was that?

(Testimony of James B. Lawton.)

Q. (By Mr. Long) About what time was that?

A. That was around 7:00 sometime.

Q. When was it with relation to the time that the "Cyane" arrived, before or after?

A. Well, it was before the "Cyane" arrived.

[2317]

Q. How soon after that did the "Cyane" arrive, as you remember it?

A. When we were holding onto the log-line?

Q. That is right.

A. Oh, she arrived in an hour or hour and a half later.

Q. Tell us what you did after you let go the line, if you did, or what happened from that time on. Take us along here.

A. We were under orders, all of us, we were doing what the skipper told us.

Q. What did you do?

A. He ordered the lifeboats back to the ship.

Q. What happened?

A. So we pulled up to the ship.

Q. On which side?

A. On the port side, amidships, and we all went aboard again. Shortly after that the Coast Guard Cutter "Cyane" arrived. I am not sure of the time it arrived, even, but it was shortly after 8:00, I believe.

Q. What occurred after the Coast Guard Cutter arrived?

(Testimony of James B. Lawton.)

A. They laid off about, oh 100 yards, maybe, from the site of our ship, and our captain talked with the Commander, or whoever runs those boats, over several details, which I did not pay any attention to, but I did hear him ask the Commander—

Q. (Interposing) You cannot tell what he said, because counsel would object to that. Just what did the “Cyane” do?

A. We had eleven pigs aboard the ship, and the Captain wanted them transferred to the “Cyane”, if possible. [2318] It was agreed on, and the “Cyane” pulled over alongside us. At that time it was getting rougher—it was a pretty good sea running.

Q. Was there any wind at that time?

A. There was a little wind, too, yes.

Q. Do you recall the direction of the wind?

A. From the south, somewhere.

Q. Just tell us what happened.

A. They succeeded in transferring the eleven pigs from the “Denali” to the “Cyane”, but in doing so they lost their topmast.

Q. Who do you mean lost the topmast?

A. The “Cyane”.

Q. How?

A. One of our booms got loose and snapped it off. And also a davit, or two davits, or something like that. I forget just what it was. As soon as they got the pigs transferred safely they hauled off again.

Q. What happened then?

(Testimony of James B. Lawton.)

A. The captain ordered all hands off the ship, all the crew and men that were left aboard the ship, and they got in the lifeboats, except the skipper, the first mate and myself.

Q. Was that the last boat?

A. Yes; it was the last boat.

Q. Tell us what occurred then.

A. The Captain told the men in the boat to pull over on board the "Cyane", which they did. The three of us were left alone, and there really wasn't anything to do—we had done all we could to save the ship. [2319]

Q. About what time was this, as best you remember, Mr. Lawton?

A. Oh, I don't know. It was after 10:00 o'clock, anyhow.

Q. 10:00 o'clock in the morning?

A. Yes.

Q. What occurred then?

A. Well, we went forward through the shelter deck and looked at the ship where she had split in half. It looked pretty bad. There was **nothing** could be done about it. We went up and sat down by the galley to talk things over.

Q. When did you leave the ship after that, Mr. Lawton?

A. At that time we had no lifeboat aboard the ship—

Q. (Interposing) How did you leave?

(Testimony of James B. Lawton.)

A. The Coast Guard Cutter had pulled around from our port side around to our starboard side, and was laying half a mile or something like that away from our ship.

Q. How was the weather at that time?

A. It was getting worse all the time. It was quite rough then.

Q. Then what happened?

A. We took the ship's megaphone and hollered over to the "Cyane" and asked them if they couldn't come up close enough so we could throw them a line.

Q. What did they do?

A. They proceeded to do just that. We threw a heaving line and asked them if they wouldn't tie that lifeboat that brought our men over there onto the heaving line. When they had it all fast we pulled the lifeboat over to the ship and made her fast amidships, on the port side.

Q. Then what did you do? Was the "Denali" pounding, or doing [2320] anything at that time? Tell us what she was doing, if she was doing anything.

A. Well, as time went on the ship started to shake, the sea got rougher and she started to shake and shiver a little.

Q. What did you do after you got the lifeboat? I say "you", but I mean you and the captain and the first officer, the three of you there. What occurred?

A. Well, we told the captain.

(Testimony of James B. Lawton.)

Q. (Interposing) You cannot say what you said, but just go right ahead, Mr. Lawton, and tell us what you did, and what occurred.

A. We convinced the captain—is that right?

Q. All right; go ahead.

A. That he couldn't do no more aboard the ship, so he agreed to leave with us.

Q. Did he want to stay aboard the ship, is that it?

A. Yes; he did. So before we left the captain said to get the navigation instruments off the bridge and put them in our lifeboat.

Q. What did you do with respect to that?

A. That is just what we did. We got the compasses, the bearing board and charts, the azimuth book, put them all by the side of the ship and lowered them into the lifeboat.

Q. What was the state of the weather at that time? Had it increased any?

A. It was increasing, getting rougher all the time, very fast.

Q. Tell us what you did then? [2321]

A. Well, a few minutes later we crawled down the ladder and got into the lifeboats and tried to start out for the Coast Guard Cutter, which was lying on our starboard side again, about half a mile off from us.

Q. Tell what experiences you had in getting to the "Cyane", or what you did.

(Testimony of James B. Lawton.)

The Court: Before he does that; will you ask the witness what, if anything, was loaded into this lifeboat.

Mr. Long: Yes, Your Honor, I will do that.

Q. (By Mr. Long) What was loaded into this lifeboat, Mr. Lawton?

A. We had lowered the ship's navigation instruments down into the boat.

Q. Were the compasses put in the lifeboat?

A. Yes; the compasses.

Q. How about the charts?

A. The charts, yes; all the navigation instruments that we took.

Q. The azimuth book?

A. Yes, the azimuth book.

Q. Then what occurred?

A. We started to go over to the "Cyane", the Coast Guard boat.

Q. How was the sea and weather at that time, when you started to do that?

A. The sea was real rough at that time, and we had plenty of trouble.

Q. Was the lifeboat taking any water?

A. There was water and oil in the boat.

Mr. Summers: That is objected to as leading.

[2322]

The Court: Yes.

Q. What was in the boat, besides yourselves and this equipment?

A. Water and oil.

(Testimony of James B. Lawton.)

Q. What was on the surface of the water around the ship?

A. Plenty of oil, crude oil.

Q. Just tell us what you did.

A. We wanted to row over to the "Cyane".

Q. How many men were in the boat at this time?

A. The captain, the first mate and myself.

Q. What did you do?

A. Well, we couldn't do much rowing. We tried, but we couldn't make any headway.

Q. Why not?

A. Well, the weather was so rough, strong current. The "Cyane" saw our trouble, and also a lifeboat from Zayas Island. The "Cyane" kept pulling in closer to us, and the lifeboat from the island came out, and after monkeying around a little, trying to get alongside of us, it finally did, and transferred about six men into our boat, so that we would have enough men to properly handle the lifeboat.

Q. And what did you do?

A. The "Cyane" had come in quite close, and in a few minutes we had rowed up to her and got alongside.

The Court: At this point we will take the noon recess, until 2:00 o'clock p.m.

(Whereupon a recess was taken until

2:00 o'clock p.m., November 9, 1937.) [2323]

(Testimony of James B. Lawton.)

November 9, 1937,

2:08 o'clock P.M.

Court convened pursuant to adjournment;

All parties present.

The Court: You may proceed with the case on trial.

Mr. Long: Take the stand, Mr. Lawton.

JAMES B. LAWTON,

resumed the stand for further examination.

Further Direct Examination.

By Mr. Long:

Q. Mr. Lawton, prior to the noon recess you had described how you, Captain Healy and the first officer had placed certain pieces of equipment in this lifeboat which you secured to the "Cyane". I believe at the time when the examination ceased you were telling us about making progress to the "Cyane". Just tell us what occurred from then on; when you got aboard the boat, and so forth.

A. The sea was pretty rough at that time of the morning. We went alongside the side of the "Cyane", and the men all watched their chance. First the lifeboat would be down below the "Cyane", and then it would be up on top, and as they had a chance they all climbed aboard the "Cyane". One of the officers on the "Cyane" said that there were three or four of our crew on Zayas Island yet, and he wanted to get them and move away from

(Testimony of James B. Lawton.)

the spot where the "Cyane" was in. I told him that I would [2324] go in the boat if he would put some of his men in there. He put six Coast Guard sailors in with me, and we pulled over to a little bay at the south end of Zayas Island. We picked up three or four of the "Denali's" crew and headed back towards the "Cyane". We got alongside all right. She was going ahead, and diving and rolling quite bad.

Q. When you say "she" what do you refer to?

A. I refer to the "Cyane".

Q. Go ahead.

A. When we got alongside the boat was not just laying alongside. One moment she would be way down at the bottom of the sea, and the "Cyane" was above us, and at the next big swell that would come along the "Cyane" would be down below and we would be on top.

The men all climbed aboard the "Cyane" and I asked somebody on deck to take the ship's navigation instruments which we had in the bottom of this boat.

Q. Was there anything else in the boat at that time?

A. Yes. There was a lot of water and oil in the boat.

Q. All right. Just go ahead from there.

A. Well, the boat was banging up against the side of the "Cyane" on account of the waves hitting it. I stepped down to the bottom of the lifeboat and

(Testimony of James B. Lawton.)

got one of the compasses. They are not very handy to hold onto. I used two hands to hold onto the compass. I stepped up into the side athwart of the lifeboat and was waiting a chance until we came up level with the deck of the "Cyane" to pass over this compass aboard to someone standing up at the rail. In doing so I lost my balance [2325] and started to fall in between the lifeboat and the Coast Guard Cutter. In order not to fall in between the sides of the boats I threw myself backwards, landing in the bottom of our lifeboat, with the compass on top of me.

The commander, or one of the officers on watch hollered down to get out of the lifeboat, that it was not safe in it any more——

The Court: (Interposing) To get out of the lifeboat?

The Witness: Yes, sir.

Q. (By Mr. Long) Just speak up a little more distinctly, Mr. Lawton.

A. All right. And I said, "All right". There was a bundle of charts laying in the corner of the lifeboat where I was at, and while waiting for the lifeboat to come up level with the "Cyane" I grabbed for this bundle of charts but only succeeded in getting one of them. Well, I didn't stop for any more. I had a chance to scramble over on the "Cyane", so I did that.

Q. What happened then? What happened to the lifeboat?

(Testimony of James B. Lawton.)

A. The lifeboat was caving in, getting full of water, and it was swamped. They ordered the lifeboat put astern, towed on the line. They towed them for a while——

The Court: (Interposing) Meaning what? Towed what for a while?

The Witness: The "Cyane" towed the "Denali's" lifeboats, or what was left of them. Several of them were caved in, and the others were full of water by that time. [2326]

Q. What happened to them then?

A. Two of them sank.

Q. What is that?

A. Two of them sank.

Q. What was done with the others?

A. The other two were so water logged that the commander ordered them cut adrift.

Q. And what was done with them?

A. They were cut adrift. The line—the tow line that we towed them with was cut.

Q. Was any of that equipment to your knowledge, Mr. Lawton, ever saved that was within that boat other than the chart that you have mentioned?

A. None to my knowledge.

Q. Now, where did the "Cyane" take you and the rest of the crew?

A. We went over and laid a couple of miles off of the starboard side of the ship for a while. I don't know for what time. Finally there was noth-

(Testimony of James B. Lawton.)

ing to do. They headed the "Cyane" for Ketchikan.

Q. Did you see the "Denali" after that?

A. No, I did not.

Q. Did you go to the scene of the wreck the following morning?

A. No.

Q. What was the condition of the wreck as you recall, Mr. Lawton, when you left?

A. As I recall it, the last time I saw it she was broke in two forward of the bridge, and she was afire.

Mr. Long: That is all.

The Court: You may cross examine. [2327]

Cross Examination.

By Mr. Ryan:

Q. When did you first tell Captain Healy of the "Denali" about the heading the vessel was on at the time of the stranding, and of this hauling to the east or right?

A. Will you read that question again, please?

(Question read)

Q. (Continuing) That you have testified to.

A. I don't remember of ever telling him or having a conversation about that.

Q. You were on the bridge on watch at the time of the stranding, weren't you?

A. Yes, I was.

Q. And Captain Healy never asked you what course the vessel was steering at the time of the

(Testimony of James B. Lawton.)

stranding, or about the circumstances of the stranding at all at any time, is that your story?

A. Yes, sir. Captain Obert was the officer in charge of my watch.

Q. Wasn't Captain Healy the master of that ship?

A. Yes, sir, he was.

Q. Didn't he ever ask you what your knowledge was of the courses the vessel was steering at the time of the stranding, and what courses she was on from Triple Island to the point of stranding?

A. No, I cannot recall that he did.

Q. And you never told him?

A. I just explained to you that the officer in charge of that watch was Captain Obert. I was under him.

Q. The question is, and you never told Captain Healy, the [2328] captain of that ship, at any time what you knew about this heading of the ship at the time that she struck the reef—the course that she was on, or about these various haulings to the right that you testified to today. Is that what you testify?

A. I mean that I——

Q. (Interposing) Just answer that by yes or no. Did you or did you not tell Captain Healy about that?

A. No, I did not.

Q. You did not?

A. No.

(Testimony of James B. Lawton.)

Q. Why not?

A. Because I don't recall him ever asking me.

Q. And you didn't think it was your duty to tell him?

A. No, sir, I did not.

Q. And you stayed on the ship with Captain Healy after the pilot left the ship?

A. Yes, I did.

Q. And you were on there for some time?

A. Yes.

Q. For some hours?

A. Yes.

Q. And then you went with the captain on board the Coast Guard Cutter "Cyane", didn't you?

A. We all went aboard the "Cyane".

Q. Yes. And you were with Captain Healy all the way down to Seattle, weren't you?

A. Yes, I was.

Q. And then when you arrived at Seattle to what officers did you go to make a statement? [2329]

A. When we arrived in Seattle?

Q. Yes.

A. I went straight home.

Q. Then what officers did you go to later on?

A. Later on we went to the Steamboat Inspectors.

Q. Did you go to any other offices before that?

A. Not that I can recall, I did not. [2330]

Q. (By Mr. Ryan) You did not go to Mr.

(Testimony of James B. Lawton.)

Murphy's office with the other officers, shortly after the vessel arrived at Seattle?

A. I don't recall that I did.

Q. Did you go to any officer's office of the Alaska Steamship Company after you arrived at Seattle, shortly after the stranding?

A. No, I did not.

Q. With whom did you go up to the Steamboat Inspectors' office?

A. I went up with myself, I imagine.

Q. Who told you to go up?

A. They notified me some way. I can't recall.

Q. Who notified you?

A. I don't know.

Q. To whom did you tell the circumstances of the stranding, after you arrived at Seattle?

A. The Inspectors had an investigation.

Q. Before you went to the Inspectors.

A. I didn't tell it to anybody.

Q. Are you sure about that?

A. I don't recall telling it to anybody.

Q. Didn't you go up to the Steamboat Inspectors' office with a lawyer in Mr. Bogle's firm, counsel for Petitioner?

A. I certainly did not. They might have been up there, but I didn't go with them.

Q. You saw them there, didn't you?

A. I don't know one from another, to tell you the truth.

(Testimony of James B. Lawton.)

Q. So your story is that when you came down here to Seattle you didn't report to anybody, nobody asked you about [2331] anything, and then somebody whom you cannot remember, told you to go up to the Inspectors, and you just walked in; is that your story?

A. It might not have been just like that.

Q. Then tell us just how it was.

A. I don't remember of talking to anybody. I know I was home most of the time.

Q. Tell us what you were doing the rest of the time, when you were reporting to somebody about what had happened, as the officer on watch with the pilot?

A. I didn't report to anybody.

Q. You didn't tell anybody about the circumstances of the stranding, or about these haulings to the right, or anything of that sort?

A. I can't recall that I did.

Q. Can you recall that you did not?

A. I am pretty sure I did not.

Q. Is this your handwriting in the deck log book, from midnight down to and including the time of the stranding, on May 19, 1935, referring to Claimants' Exhibit A-4?

A. You mean on watch, sir?

Q. Yes.

A. Yes, sir; that is my handwriting.

Q. All of it is your handwriting, isn't it?

A. Yes; it is.

(Testimony of James B. Lawton.)

Q. When did you make those entries?

A. At the time.

Q. What time?

A. At the time noted there for each entry.

Q. Well, take the first line, when did you make that entry [2332] (showing), referring to the pilot house log book, Claimants' Exhibit A-4?

A. I made that at 12:06.

Q. A.M., on May 19, 1935?

A. Yes.

Q. When did you make the next entry?

A. At 1:00 o'clock.

Q. A.M., on May 19, 1935?

A. Yes.

Q. When did you make the next entry?

A. At 2:00 o'clock.

Q. A.M. on May 19, 1935?

A. Yes, sir.

Q. When did you make the next entry?

A. At 2:37.

Q. A.M., on May 19, 1935?

A. Yes, sir.

Q. What is that entry?

A. At 2:37, south end Zayas Island abeam.

Q. Read the rest of what you put on there at that time, what you entered?

A. I entered the same course.

Q. Read what you entered there at 2:37 A.M. on May 19, 1935, in that log book.

(Testimony of James B. Lawton.)

A. 37 minutes from 2:00 o'clock, to 2:37, is that what you mean?

Q. Read all that you entered there at 2:37 a.m. on May 19, 1935, in that deck log book of the "Denali", Claimants' Exhibit A-4.

A. North $\frac{3}{4}$ West for pilot house course; bridge compass [2333] North $\frac{3}{4}$ West; log 596.9; tide ebbing; wind was northwest wind, hazy.

Q. You knew that entry was false at the time you made it, did you not?

A. I don't know what you mean.

Q. You knew the vessel was not on a North $\frac{3}{4}$ West course at that time, either by standard or by steering compass, didn't you?

A. I knew in Alaska waters it is the custom in piloting the ship to not enter the various changes.

Q. Well, you knew that was false at the time that you entered it, didn't you?

A. I didn't consider it false, no.

Q. You took that bearing yourself, did you not?

A. On the end of Zayas Island?

Q. Yes.

A. Yes; I did.

Q. And you wrote in there the time you took the bearing?

A. Yes.

Q. And that you took it on the south end of Zayas Island?

A. Yes.

(Testimony of James B. Lawton.)

Q. And that the heading of the ship by standard compass was North $\frac{3}{4}$ West?

A. Yes.

Q. And that the heading of the ship by pilot house compass was North $\frac{3}{4}$ West, did you not?

A. Yes, sir.

Q. Now, you know as a licensed officer, that that entry is both false and misleading, don't you; and you knew it at the time? [2334]

A. I know that that entry is according to the custom on the Alaskan run. If we entered all the courses we steered on a trip to Alaska we would have to have a stack of books a foot high. Everybody else knows that.

Q. Please answer the question. Read the question. (Last question read.)

A. I know that was not the course we would actually steer, yes.

Q. In other words, you moved the ship from a place where you knew the ship was to some other place by putting the bearing in such a way that whoever read the log book would think the ship was at a point on a North $\frac{3}{4}$ West course, so that the island would be abeam, fixing one place, when you knew in fact that the vessel was in an entirely different place, on a different course, so that if you put down that other course when you took that abeam bearing whoever read it would know the actual truth, isn't that so?

A. These entries——

(Testimony of James B. Lawton.)

Q. (Interposing) Answer that yes or no, please.

Mr. Long: Read him the question.

Q. (By Mr. Ryan) Answer that yes or no, first, and then you can explain it if you want to.

Mr. Long: Read the question to the witness.

Mr. Ryan: The witness has not said he doesn't understand the question.

Mr. Long: I cannot follow it in order to make an objection, and I ask that the question be read again.

The Court: The Court will direct that it be read again, and if you understand it after it is read you can [2335] answer it, and in the future you keep your mind on the specific form of the question, and the matter of whether or not it should be answered will be dependent upon the objections made and the ruling of the Court. Read the question. (Last question read.)

The Witness: Do you wish me to answer yes or no to that?

Q. (By Mr. Ryan) Answer yes or no and then explain your answer.

A. I cannot answer it yes or no, a question like that.

Q. Then answer it the best you can.

The Court: Counsel has asked that you answer it in any way you best can.

Mr. Long: Answer it in your own way.

Mr. Ryan: Please read it again.

(Testimony of James B. Lawton.)

The Witness: I do not exactly get the drift of your question.

Mr. Ryan: I will ask it again.

The Court: Very well. Try to make it shorter, Mr. Ryan, if you can.

Q. (By Mr. Ryan) You know that if you record in your log book that a ship is on a certain course, say North $\frac{3}{4}$ West, and that you have taken an abeam bearing of a known landmark at a given time, that you or anybody else can plot that position on the chart as a known place where the ship is, don't you?

A. Yes; we could.

Q. And you further know that if you change that course and state falsely that it was some other course, that then whoever tries to plot that on a chart will be misled, [2336] because the abeam bearing from it will run in an entirely different direction, and the ship will be at a different place. You know that, don't you?

A. No, I do not.

Q. All right; I will ask you——

A. (Interposing) I know what you mean.

Q. Then if you do, answer it.

A. Our courses, headings to the right——

Q. (Interposing) I am not asking you about anything else; I am asking you that specific question, and if you do not understand it, say so, and if you do understand it, answer it.

(Testimony of James B. Lawton.)

A. Read that again, will you, please? (Question read as follows:

“And you further know that if you change that course and state falsely that it was some other course, that then whoever tries to plot that on the chart will be misled, because the abeam bearing from it will run in an entirely different direction, and the ship will be at a different place. You know that, don't you?”)

A. Well, nobody is going to try to plot that, when the tides in that place are so strong, and we make notations on the side—which we were going to do—nobody would have to plot that course out.

Q. Your answer to the question is “yes”, then, is it?

Mr. Long: I think, Your Honor, the answer is complete.

The Court: The objection is overruled.

The Witness: Nobody would refer to that the next [2337] time going through. We would have had a notation “Strong ebb tide, course not to be relied on.” That is the way you mark it on the Alaska run.

Q. Where is any entry like that in this log book?

A. Well, the ship happened to strike, and we had something else to do without writing a story in the log book.

Q. There isn't any such entry in the log book?

(Testimony of James B. Lawton.)

A. We had lives to answer for.

Q. Answer that yes or no, and do not spar around.

A. Well, you can see there is no entry like that.

Q. All right.

The Court: Hold down your voice, Mr. Ryan. The Court has instructed you fully on that.

Mr. Ryan: Yes, Your Honor.

The Court: And I want counsel in making objections to hold down his voice and not storm at this witness. Proceed.

Q. (By Mr. Ryan) When did you make this next entry in that log book, dated May 19, 1935 (showing)?

A. Do you mean at 2:44?

Q. Yes.

A. I noted the time at 2:44. I am not sure if I made the entry right at the moment or not.

Q. When did you make it, according to your best recollection?

A. My best recollection would be 2:44.

Q. That is the moment the ship actually struck, isn't it?

A. Well, not the moment. You cannot go by a moment, exactly.

Q. What is your best recollection as to when you made that entry? [2338]

A. I believe 2:44 is awfully close to it.

Q. It is made in red pencil, is it not?

A. Yes; it is.

(Testimony of James B. Lawton.)

Q. Seven minutes before you were making entries in black pencil, weren't you?

A. Yes. That doesn't signify a thing, except—

Q. (Interposing) When were these entries from 6:00 p.m., May 18, 1935, to midnight, made, if you know, in this deck log book, Claimants' Exhibit A-4?

A. What time did you say?

Q. I am asking you what time they were made, or when they were made?

A. All these entries?

Q. Yes; if you know.

A. The 2:00 o'clock entry was made at 2:00 o'clock.

Q. Were you there? Did you make that entry?

A. Yes, I did.

Q. I am asking you about the entries from 6:00 p.m. to midnight, first, on May 18, 1935, as entered in that deck log book. When were they made, if you know?

A. They were made between 6:00 o'clock and midnight.

Q. Do you know that of your own knowledge?

A. No; I do not.

Q. Do you know when they were made?

A. It gives the time right here when they were made.

Q. You do not know when they were made, is that your answer?

A. I cannot recall that I know when they were made.

(Testimony of James B. Lawton.)

Q. There are erasures in that column there recording the log readings, are there not?

A. That watch? [2339]

Q. From 6:00 p.m., May 18, to midnight (showing).

A. Well, I certainly wouldn't swear that there were erasings made there.

Mr. Ryan: May I show it to the Court. (Counsel shows document to the Court.)

The Court: Is this the same book on which the subject of erasures was previously gone into?

Mr. Ryan: Not that particular point, Your Honor.

Mr. Long: Was this witness on watch, Mr. Ryan?

The Witness: It was not my watch, and I had nothing to do with that part of the evening.

Q. (By Mr. Ryan) Did you make those erasures in that log book between 6:00 p.m., May 18, 1935 and midnight?

A. I told you I wasn't on watch.

Q. I do not care whether you were on watch or not; I want to know whether or not you made those erasures?

A. No; I did not make them.

Q. You did not make them?

A. Of course not.

Q. Did you write in those new figures that are there, that were written in after the erasures were made?

(Testimony of James B. Lawton.)

A. No; I did not.

Q. You are positive about that?

Mr. Long: May I see the book?

Q. (By Mr. Ryan) Will you show me in that deck log book your other handwriting, running right back from the time of the stranding? Indicate the pages and the dates and the entries which are in your handwriting.

Mr. Long: Have you any objection to me looking at the thing you are referring to? [2340]

Mr. Ryan: The witness is looking at it now.

Mr. Long: Have you any objection to my looking at it?

Mr. Ryan: No; none at all.

Mr. Long: May I look at it, Your Honor?

The Court: Yes, you may.

The Witness: What was your question? (Question read as follows:

“Q. Will you show me in that deck log book your other handwriting, running right back from the time of the stranding? Indicate the pages and the dates and the entries which are in your handwriting.”)

Do you want all of them?

Q. Mr. Ryan: Read the question to him.

The Court: Yes; you go right ahead and point out all of those which you can.

The Witness: May 17th?

The Court: And identify the place in the book where it is, either by the watch or by the position

(Testimony of James B. Lawton.)

or page, or some method of identification of the place where it may be found.

The Witness: On the 12:00 midnight watch, on May 17th.

The Court: Beginning that watch or ending at that time?

The Witness: Beginning that watch, beginning at 12:08, and ending at 4:00 o'clock.

The Court: Proceed right along now.

Q. (By Mr. Ryan) 4:00 a.m. on May 17th, is that it? [2341]

A. Yes, sir.

Q. How about May 18th?

A. 2:00 a.m. in the morning, May 18th.

Q. Down to what time?

A. 4:00 a.m.

Q. May 18th. No other entries of yours on May 17th, except from midnight to 4:00 a.m., May 17th?

A. No. May 19th; 12:06 a.m. to 2:37 a.m.

Q. The entry at 2:44 a.m. is also your handwriting, isn't it?

A. Yes; it is.

Q. And the other writing there. Now, May 18th—they are the only entries in your handwriting from midnight down to 4:00 a.m. on May 18th?

A. That is all.

Q. On May 17th are the only entries in your handwriting from 12:00 midnight to 4:00 a.m.?

A. May 17th?

Q. Yes.

(Testimony of James B. Lawton.)

A. No; there is one more entry; 5:05 p.m. in the afternoon of May 17th.

Q. Any entries from then on until midnight?

A. No.

Q. What entries on May 16th are in your handwriting?

A. None.

Q. Are you sure there are no other entries in your handwriting, excepting those you have just given us, in that pilot house log book; is that so?

A. I cannot see any.

The Court: The answer was "I cannot see any." Proceed.

Q. What heading or course was the "Denali" steering at the [2342] moment she struck the reef on May 19th, 1935?

A. She was steering North $\frac{3}{4}$ East.

Q. You are positive about that?

A. Yes, I am.

Q. Did you or did you not, on May 24, 1935, at the investigation before the United States Steamboat Inspectors, in Seattle, when you were under oath to tell the whole truth, testify as follows, page 13 of the official transcript of the investigation of the United States Steamboat Inspectors:

"Q. When the vessel struck it was steering North $\frac{3}{4}$ West?

A. Yes, sir."

Did you or did you not so swear under oath at that time?

(Testimony of James B. Lawton.)

A. I don't remember making that answer. If I did, the answer is wrong.

Q. Did you or did you not so testify under oath at that time?

A. I said I don't remember of making that answer.

Q. Do you remember not making that answer?

A. I don't remember the question, even.

Q. I will read it to you again. Did you or did you not testify under oath before the United States Steamboat Inspectors, in Seattle, on May 24, 1935, at the official investigation of this stranding, as follows:

“Q. When the vessel struck it was steering North $\frac{3}{4}$ West?

A. Yes, sir.”

Did you or did you not so swear under oath at that time?

A. If I made that——

Q. (Interposing) Answer yes or no, please.

[2343]

The Court: Did you?

The Witness: I don't remember making that answer.

Q. Is that answer true or false?

A. It is not false; it is incorrect, if I so answered.

Q. Did you or did you not testify under oath before the United States Steamboat Inspectors, in

(Testimony of James B. Lawton.)

Seattle on May 24 1935 at the official investigation of this stranding as follows:

“Q. The pilot house compass is North $\frac{3}{4}$ West?

A. Yes, sir.”

Did you or did you not so testify under oath?

Mr. Long: That is another one?

Mr. Ryan: That is another one.

Mr. Long: What page are you talking about?

The Court: Each time will you kindly give the page reference.

Mr. Ryan: Yes; page 13.

The Witness: Please read the question again. (Last question read.) If I——

The Court: (Interposing) Well, say whether you did or not.

Mr. Ryan: Answer yes or no.

The Witness: Will you read the question again, please? (Question re-read.) That referred to the pilot house compass——

The Court: You can explain later on whether it expressed the truth or not, but the question is, did you testify as counsel read to you from the record indicating that you did? Did you so testify?

The Witness: Your Honor, may I look at that question? [2344]

The Court: No. Counsel is testing your recollection, and he has a right to ask you without you looking at anything. Answer it if you can.

(Testimony of James B. Lawton.)

The Witness: Did you read the full question to me?

The Court: Well, answer yes or no, or whether or not you remember.

The Witness: I do not remember that. [2345]

Q. You deny that you so testified?

A. No, I do not.

Q. If you did so testify was that testimony true or false in fact?

A. I would have to read that over before I could answer you.

Q. Will you answer that question? If you did so testify, was that testimony true or false in fact?

A. I did not testify falsely to the Inspectors at any time.

Q. You deny then, do you, that you answered the questions that I have read to you as I have read them to you from the official transcript of the Steamboat Inspectors' investigation, do you? You deny that, is that right?

A. No.

Q. You don't deny that?

A. I don't deny them.

Q. Why then——

A. (Interposing) I don't remember making them.

Q. Why then didn't you tell the truth to the Steamboat Inspectors then when they asked you the questions?

(Testimony of James B. Lawton.)

A. I don't remember them questions. The questions were——

Q. (Interposing) I want to give you every opportunity here. Do you deny that you were asked those questions and gave those answers that I have read to you by the Steamboat Inspectors on May 24, 1935, at the official investigation of this stranding?

A. I don't remember the question, but if my answer was, "Yes" it is incorrect. I testified here that the ship was steering North $\frac{3}{4}$ East, and that is what she was steering, and I never once said that the ship was steering North $\frac{3}{4}$ West when she struck. You show that to me, [2346] will you, please?

The Court: Counsel has a right to inquire of you to ascertain your recollection.

Mr. Ryan: All right.

Q. (By Mr. Ryan) In other words, if this is the testimony you gave before the United States Steamboat Inspectors, it is false in fact, isn't it?

A. Well——

Mr. Long: (Interposing) I would ask that the witness' attention be directed to which question he is referring to.

Mr. Ryan: I am referring to both of them.

Mr. Long: Well, they pertain to different times—they pertain to two different times.

The Court: The objection is overruled.

(Testimony of James B. Lawton.)

Mr. Long: I think that he should direct his attention to what particular time he is asking about in this question.

Mr. Ryan: I do not want there to be any doubt about it, and I will ask you again in view of counsel's interruption here.

Q. (By Mr. Ryan) Did you or did you not testify under oath before the United States Steamboat Inspectors at Seattle on May 24, 1935, at the investigation of this stranding as follows,

“Q. When the vessel struck it was steering North $\frac{3}{4}$ West?

A. Yes, sir.”

Did you or did you not so testify under oath?

A. I just told you that my answer was “Yes”—

[2347]

The Court: (Interposing) Now, Mr. Lawton, that is not the situation. Counsel has asked you if you said so and so upon being asked a certain question at a certain time, and counsel now has a right to ask you whether or not you did, and the Court must compel you to state whether or not you did or did not so testify at that time. The Court does require you to answer that question.

A. I don't remember giving that answer to that question. If I did give it, I misunderstood the question.

Q. (By Mr. Ryan) But you don't deny that you gave it, do you—that you gave that answer at that time?

(Testimony of James B. Lawton.)

A. You have my answer there in front of you.

Q. Answer my question yes or no, and then go on and explain your answer, if you wish, but please answer it yes or no, so that we can make some progress. Please read the question, Mr. Reporter.

The Court: You should answer the question.

A. No, I do not deny it, but if my answer was "Yes, sir", it was incorrect, and I must have misunderstood the Inspectors—I must have understood the Inspectors to refer to our course from Triple Island, which was entered by me in the log book several times as North $\frac{3}{4}$ West on both compasses. At no time did I tell them that it was steering North $\frac{3}{4}$ West when we struck.

Q. All right.

The Court: Now ask him another question.

Mr. Ryan: All right.

Q. (By Mr. Ryan) Now, this log book entry that you made, at 2:37 A.M., on May 19, 1935, in this deck log book of the [2348] "Denali", Claimants' Exhibit A-4, states that the "Denali" at 2:37 A.M. was on a course, by bridge compass, of North $\frac{3}{4}$ West, and on a course, by pilot house compass, of North $\frac{3}{4}$ West, doesn't it?

A. Yes, sir.

Q. In your handwriting?

A. Yes, sir.

Q. And you knew that the Steamboat Inspectors had that before them, didn't you?

A. Yes.

(Testimony of James B. Lawton.)

Q. At the time of the investigation?

A. Yes.

Q. And you knew——

A. (Interposing) Yes.

Q. And you knew that that entry was false at that time?

A. The pilot had told them——

Q. (Interposing) Just answer that by yes or no. You knew that entry was false at the time that the Steamboat Inspectors had that log book before them and were examining you, didn't you?

A. Well, I would not call it false if they were using that method of navigating in Alaska for the last fifty years. Anybody knows that you don't mark down one-eighth and quarters of a point.

Q. Is it your usual practice to enter false entries in the log book—in the log book of the ship—entries which you know to be false in fact?

A. No, it is not.

Q. Then why did you do it on that occasion?

The Court: The Court will permit him to answer [2349] this question this time, but not again. He has answered that several times already.

Mr. Ryan: Yes, Your Honor.

A. I had asked the pilot if he wanted to enter the change of course in the log book and he said, "No, we will make a notation because we will probably have to haul the ship more to the right". He could not enter a course without knowing the effects of his current there. We might have hauled two

(Testimony of James B. Lawton.)

hundred times there and filled the book up with that watch.

Q. But notwithstanding that order from the pilot you went ahead and made entries anyway in the pilot book from that time on, didn't you?

A. Yes, sir.

Q. Why did you do that?

A. Because he told me to do that.

Q. You mean that you had still another conversation with him later on, is that right?

A. Well, I don't say what time.

Q. Well, when was that still other conversation that you are now mentioning?

A. Well, that is asking me a little bit too much.

Q. Was it after the stranding?

A. No, it was not.

Q. What?

A. No, sir, it was not.

Q. Was it in Mr. Murphy's office on Pier 2 in Seattle?

A. No; of course it was not.

Q. Well, where was it. Where did it take place—that still other conversation that you have now mentioned with [2350] Pilot Obert?

A. It took place on our watch during the time that the ship was running.

Q. Yes.

A. I don't remember talking to anybody after the ship was wrecked.

(Testimony of James B. Lawton.)

Q. Well, you testified on direct examination that the order that Pilot Obert gave you was, "Do not make any entries in the log book about the course, or these courses".

A. Yes, sir, I did.

Q. Now, you have testified that you went ahead anyway and did enter the courses in the log book. Now, you see the inconsistency between the two, don't you?

A. No, I don't.

Q. Then why did you disregard the Pilot Obert's orders and enter courses that you knew at the time to be false in fact?

A. You are wrong. I asked Captain Obert if he wanted to make a change in the course. Him saying, "No", naturally means to enter the same course.

Q. You testified on direct that what he told you was, "Wait a while".

A. Yes.

Q. "And afterwards we will make entries".

A. Yes.

Q. Now, you are testifying, as I understand you, that he said, "Go ahead and make entries". Now, which is true?

A. I had asked him several times that night when I compared compasses if he wanted to enter that "No change course" [2351] in the log book, and he said, "No", which means to put the old one down.

(Testimony of James B. Lawton.)

Q. Now, at the time that you testified before the United States Steamboat Inspectors didn't you know that it was a very important fact for them to know what course or heading the "Denali" was on at the time that she struck the reef?

A. Captain——

Q. (Interposing) Answer that by yes or no.

A. Captain Obert had——

Q. (Interposing) Will you answer that by yes or no, and then go on and explain it if you want to.

A. Well, yes, it is important.

Mr. Long: Now you can explain it, Mr. Lawton.

A. Captain Obert has been sailing to Alaska as a pilot for thirty years or so—I don't know the exact number of years—and it was my first trip with my license. Naturally the information that they wanted they got from Captain Obert, the pilot.

Q. They put you on the stand under oath, didn't they?

A. Yes, sir.

Q. As a witness?

A. Yes, sir.

Q. To tell the whole truth?

A. Yes, sir.

Q. And you just testified that the fact of the actual course or heading the "Denali" was on at the time that you struck the reef was one which should be called to the Steamboat Inspectors' attention. There is no doubt in your mind about that, is there? [2352]

(Testimony of James B. Lawton.)

A. I didn't know that it was not called to the attention of the Steamboat Inspectors. I still don't know it.

Q. You don't?

A. No.

Q. You didn't call it to their attention, did you?

A. No, I did not.

Q. Why not?

A. I had no reason to.

Q. You——

A. (Interposing) I just explained to you about that and my part in it. There was a man in charge of our watch who was an old timer, and we naturally took his word for everything.

Q. Now, the Steamboat Inspectors didn't ask you to tell them what you thought Pilot Obert might want to tell them. They asked you under oath what the fact was as to how the "Denali" was steering; what heading she was on, and you gave an answer, "Yes, sir". You didn't say, "I don't know", or, "Pilot Obert told me to say so", did you?

(Witness does not answer)

Q. You told them a fact which you knew was false, didn't you?

A. No, I did not.

Q. You did not, or you did?

A. I said that——

Q. (Interposing) What?

A. I said that my answer was incorrect.

Q. It was incorrect?

(Testimony of James B. Lawton.)

A. I didn't say false. I tried to explain that I must have [2353] misunderstood the Inspectors on that question.

Q. I see.

A. I did not read my testimony over, or I would have corrected it.

Q. I see. And you misunderstood the second time you were asked,

“Q. The pilot house compass is North $\frac{3}{4}$ West?

A. Yes”.

You misunderstood the question, is that right?

A. I don't remember that question.

Q. I see. Now, weren't you asked by the Steamboat Inspectors to give them any information that you had that might be important to them in connection with the investigation?

A. I might have been asked that.

Q. What did you answer when you were asked that question?

A. I don't know.

Q. Well, did you or did you not testify under oath on May 24, 1935, before the United States Steamboat Inspectors as follows, on page 14 of the official transcript,

“Q. Mr. Lawton, have you any information which you wish to give to the Board relative to this case?

A. No, sir, I have not”.

(Testimony of James B. Lawton.)

Did you or did you not so testify?

A. Yes, I did.

Q. What?

A. Yes, sir, I did.

Q. Well, why didn't you tell them the course that was being steered by the "Denali" at the time that you struck the [2354] reef while you were on watch as third mate on that ship?

A. I tried to tell you that Captain Obert was the officer in charge of our watch; that he was an old timer; that he was a good Alaska Pilot. What he didn't tell them, I am sure that I could not help the case any along.

Q. I see. Did Pilot Obert ever tell you to make a false entry in this log book with reference to the bearing that you personally took of the south end of Zayas Island, so that it would appear that the ship was somewhere other than where she actually was at that time? I call your attention to your entry, "2:37 A.M., May 19, 1935, south end Zayas Island abeam. Pilot house compass North $\frac{3}{4}$ West; bridge compass North $\frac{3}{4}$ West. Hazy". Claimants' Exhibit A-4—the pilot house log book—or the deck log book of the "Denali".

The Court: Will you read the question, please?

Mr. Long: I could not get the question either.

(Question read as follows:

"Did Pilot Obert ever tell you to make a false entry in this log book with reference to the bearing that you personally took of the

(Testimony of James B. Lawton.)

south end of Zayas Island, so that it would appear that the ship was somewhere other than where she actually was at that time?")

The Court: Now that is the question and the rest of that question is explanation. The question is what I want you to answer.

The Witness: Shall I answer the question?

The Court: Yes; answer the question.

A. No, sir, he never told me to do anything like that.

Q. (By Mr. Ryan) Did Captain Healy tell you to do it? [2355]

A. No, sir, he did not.

Q. Did anybody tell you to do it?

A. No.

Q. Now, when you testified before the United States Steamboat Inspectors you didn't tell them about this hauling to the right four times between Triple Island and the point of stranding on the reef that you have testified to here this morning, did you?

A. I don't recall telling them that.

Q. Why didn't you tell the Steamboat Inspectors that when you were under oath to tell the whole truth?

A. As I explained before the superior officer of our watch was an old timer, one of the best Alaska pilots on the run, and I was on my first trip with my license. I didn't have nothing to tell them.

(Testimony of James B. Lawton.)

Q. Did Pilot Obert tell you to falsify your testimony in giving it before the United States Steamboat Inspectors at Seattle?

A. No, sir; he certainly did not.

Q. Well, if he didn't why did you falsify your testimony before them?

A. I didn't do anything of that kind.

Mr. Long: Now, if Your Honor please, I object to that type of question and ask that it be stricken, unless it is pointed out by counsel wherein there is any false testimony here.

The Court: Objection overruled.

Mr. Ryan: What was the answer?

(Answer read as follows:

“I didn't do anything of that kind”.) [2356]

The Witness: I did not falsify before the Inspectors. I might have misunderstood a question. I was under quite a strain then myself, but I didn't think why, sir, if that is what you mean.

Q. I see. Now, again—you testified on still another occasion under oath to tell the whole truth before the United States Steamboat Inspectors, did you not—a second time you were called to the stand, isn't that right?

A. Yes.

Q. All right. Did you tell the United States Steamboat Inspectors at that time that the heading or course of the “Denali” at the time that she struck the reef was North $\frac{3}{4}$ East?

(Testimony of James B. Lawton.)

Mr. Long: I have to object to this form of examination. If Counsel wants to read the testimony and ask him if he testified to that, why, I have no objection to that.

The Court: That objection is overruled.

Mr. Long: Exception.

The Court: Exception allowed. Proceed.

A. Please read the question.

(Question read as follows:

“Did you tell the United States Steamboat Inspectors at that time that the heading or course of the ‘Denali’ at the time that she struck the reef was North $\frac{3}{4}$ East?”)

A. I cannot recall being asked that or telling them.

Q. Did you on that second occasion on which you testified, namely, at the trial on June 21, 1935, before the United States Steamboat Inspectors in Seattle, when you were [2357] called to testify as a witness—did you inform the Steamboat Inspectors of the fact that there had been four haulings or changes of the course to the right between Triple Island Light and the reef upon which the “Denali” stranded?

A. I cannot recall that I did, sir.

Q. Why didn't you?

A. As I stated before, Captain Obert knew all the details. He was an old timer, and then it is well known on that run. What did I have to tell that

(Testimony of James B. Lawton.)

he didn't know? It was my first trip with my license, you realize that, don't you?

Q. Well, you were being examined alone under oath before the Steamboat Inspectors, weren't you? You were on the stand by yourself at the time that you were asked about it?

A. Yes.

Q. Why didn't you tell the truth at that time?

Mr. Long: Now, I object to this form of examining. Call his attention to what you want him to testify to—what you want to ask him about.

The Court: Objection overruled. I will permit that question to stand.

The Witness: Did you ask a question?

Q. (By Mr. Ryan) Yes.

A. What was the question?

The Court: Read the question.

(Question read as follows:

“Why didn't you tell the truth at that time?”)

A. What do you mean, “the truth”? [2358]

Q. (By Mr. Ryan) As to what course or heading the “Denali” was steering at the time that she struck the reef, and as to the fact, to which you testified here today for the first time, that there were four changes of course or haulings to the right between Triple Island Light and the reef upon which the “Denali” stranded.

A. I naturally took it for granted that the In-

(Testimony of James B. Lawton.)

spectors knew all the details. I hadn't read over my testimony.

Q. I am referring now to the second occasion on which you were called as a witness under oath to tell the Inspectors the facts or details—what you knew about it to be the truth. I am asking you why—that second time you were called—more than a month later—a month later than the investigation, why didn't you tell them the truth on that occasion?

A. Well, I tried to answer their questions.

Mr. Long: If Your Honor please, I submit that that is an improper form of asking questions. Let counsel read the questions that are in the record.

The Court: Objection overruled.

A. I told you that I tried to answer all their questions, to the best of my ability.

Q. (By Mr. Ryan) Did you answer their questions according to what you knew to be the truth at the time that you gave it or not?

A. Why, certainly.

Q. Well, then, your testimony today is inconsistent with that, isn't it—obviously?

A. Why——

Mr. Long: (Interposing) I object to that unless [2359] he points out what it is inconsistent with.

The Court: Yes.

Mr. Long: I cannot even follow it.

(Testimony of James B. Lawton.)

The Court: Yes. You had better refer to each question.

Mr. Ryan: All right.

The Court: However, you have covered it pretty fully.

Mr. Ryan: Yes, I think I have.

The Court: As to those subjects mentioned.

Mr. Ryan: Yes, I have, Your Honor.

Q. (By Mr. Ryan) When the Steamboat Inspectors asked you on this second occasion, at the trial on June 21, 1935, what changes of course there were between Triple Island Light and the time that the "Denali" struck the reef on which she stranded, how many haulings to the right did you tell them about, if you told them any?

A. I don't recall.

Q. Did you tell them about any?

A. I tried to answer their questions.

Q. Was your memory better then than it is today?

A. No.

Q. All right. Well, now, at this time in June—on June 21, 1935, before the United States Steamboat Inspectors at Seattle, did you or did you not testify under oath as follows—

Mr. Long: (Interposing) What page?

Mr. Ryan: Page 7.

Mr. Long: Are you referring now to the trial of Captain Obert? [2360]

(Testimony of James B. Lawton.)

Mr. Ryan: There is only one trial. This is entitled "Trial".

The Court: Yes.

Mr. Long: The trial of Captain Obert?

Mr. Ryan: Yes, on page 7.

Q. (By Mr. Ryan) Did you or did you not testify under oath as follows,

"Q. Do you remember what course you were steering when Tripe Island Light was abeam; when you changed the course was it North $\frac{3}{4}$ West?

A. Yes, sir.

Q. And after you put the ship on North $\frac{3}{4}$ West, did you change the course any time before the vessel struck?

A. I hauled her to the right a little.

Q. How much—"

The Court: (Interposing) I think it would be better if you would divide that, Mr. Ryan.

Mr. Ryan: Yes, I see.

Q. (By Mr. Ryan) Did you or did you not so testify?

A. That answer—

Q. Did you or did you not—answer yes or no, please.

A. No, I did not. I did not haul the ship. There was a pilot aboard to do that. That is an error in writing, or something. I don't know who makes them.

Q. Well, excepting for the word "I" did you or did you not so testify?

(Testimony of James B. Lawton.)

A. I don't recall that.

Q. Do you deny that you so testified? [2361]

A. I know that I didn't testify that I hauled the ship to the right.

Q. Well, did you testify that anybody else hauled the ship to the right a little, in answer to a question reading this way,

“Q. And after you put the ship on North $\frac{3}{4}$ West did you change the course any time before the vessel struck?”

A. My answer is there. I guess I did. I don't remember the particular question.

Q. You don't deny that you did answer——

A. (Interposing) No, I don't deny that.

Q. (Continuing)——as I read it to you, is that right?

A. Well, you read it to me as “I”.

Q. You don't deny that you answered as I have read it to you, but substituting the word “he” for “I,” is that right?

A. If you substitute one word, why can't you substitute six or seven more? I don't know what you are looking at there.

Q. What I am trying to find out is whether you deny that you testified under oath before the Steamboat Inspectors here in Seattle on June 21, 1935, on the second occasion on which you were a witness before them as follows,

(Testimony of James B. Lawton.)

“ Do you remember what course you were steering when Triple Island Light was abeam? When you changed the course, was it North $\frac{3}{4}$ West?

A. Yes, sir.

Q. After you put the ship on North $\frac{3}{4}$ West [2362] did you change the course any time before the vessel struck?

A. I hauled her to the right a little”.

Did you or did you not so testify?

A. I never hauled that ship at any time.

The Court: No, that is not the question. Did you testify as he has read it to you there, did you so testify at the former trial?

The Witness: Well, I don't remember that exact testimony.

Q. (By Mr. Ryan) Well, then, you deny it, is that right?

A. No, I don't deny it.

The Court: Very well.

Mr. Ryan: All right.

Q. (By Mr. Ryan) Now, did you further testify at that time,

“Q. How much? Wasn't it north?

A. I think it was.

Q. How long did she stay on that course north——about fifteen minutes?

A. Something like that; fifteen or twenty minutes”.

(Testimony of James B. Lawton.)

Did you or did you not so testify?

(Witness does not answer)

The Court: Speak up, please.

The Witness: Well, I recall something like that, but I cannot remember that word for word—not those questions.

Q. (By Mr. Ryan) Do you deny that you so testified?

A. No, I don't deny it.

Q. You never mentioned to the Steamboat Inspectors any other [2363] hauling to the right than the one that I have mentioned, did you, namely, hauling to the course North for about fifteen minutes, or fifteen or twenty minutes, did you?

A. I tried to answer their questions.

Q. But you never mentioned any other hauling to the right, did you?

A. Not that I recall.

Q. And you never mentioned to them that you hauled over to North $\frac{3}{4}$ East at any time, did you?

A. Not that I recall.

Q. Now, when you first sighted Zayas Island, how did it bear?

A. She bore ahead a little bit on the port bow.

The Court. At this time we will take a ten minute recess.

(Recess) [2364]

(Testimony of James B. Lawton.)

The Court: You may proceed.

Q. (By Mr. Ryan) In order to refresh your memory, isn't it a fact that the Steamboat Inspectors showed you this pilot house log book, Claimants' Exhibit A-5 and showed you these entries here at 2:37 and 2:44, on May 19, 1935 (showing document to witness), and then asked you, after showing you your own log book entry, to tell them under oath what course the "Denali" was on at the time—what course the "Denali" was steering at the time she struck the reef.

Mr. Long: What page of the record?

The Witness: They never asked me any such thing as that.

Mr. Ryan: It is page 13.

Q. (By Mr. Ryan) What?

A. No; they didn't ask me that.

Mr. Long: Page 13 of the transcript of the trial of Capt. Obert, or the investigation?

Q. (By Mr. Ryan) Did you or did you not on May 24, 1935, before the United States Steamboat Inspectors, in Seattle, at their investigation, testify as follows, at page 13 of the official transcript:

"Q. Is this your writing (designating)?

A. Yes, sir; that is my writing.

Q. When the vessel struck it was steering North $\frac{3}{4}$ West?

A. Yes, sir."

Did you or did you not so testify?

A. I do not remember giving that answer, but if I gave that answer it is incorrect. [2365]

(Testimony of James B. Lawton.)

Q. Do you remember the Steamboat Inspectors, before they asked the question, immediately before they asked it, handing you that deck log book, Claimants' Exhibit A-4, which you now have in your hand, and asking you first, "Is that your handwriting?" Referring to those entries, 2:37 and 2:44, on May 19, 1935?

Mr. Long: If Your Honor please, there is no reference to what entries they are referring to.

The Court: The objection is overruled. He has the right to ask him the question. Answer the question, if you can. Proceed.

The Witness: Please read that. (Last question read.) I recall something like that.

Q. (By Mr. Ryan) Well, you knew at that time those entries made by you were false, in fact, didn't you?

Mr. Long: That is objected to as repetition. Counsel has asked that many times.

Mr. Ryan: I am trying to refresh his recollection.

The Court: The objection is sustained. Proceed to another question and subject matter.

Q. Now, you testified just before recess that when you first sighted Zayas Island it was ahead of you, is that right?

A. It was ahead and on the port bow.

Q. Which was it, ahead or on the port bow?

A. The head of the ship was pointing to the inside, eastern shore of Zayas Island, but the island was on the port bow.

(Testimony of James B. Lawton.)

Q. But the heading of the ship—it was heading towards the island, and if it continued right ahead it would hit the [2366] island, is that right, Zayas Island, at the time you first sighted it?

A. I cannot say that. I do not know how the tide would affect it.

Q. What do you say?—If the “Denali” had continued on the heading or course she was steering at the time you first sighted Zayas Island, would the “Denali” have hit Zayas Island or not?

A. No; the tide would have set her five or six miles, at least, to the West of Zayas Island.

Q. Oh, I see. So that Zayas Island was on the starboard, is that right?

A. No; it was not. I said that Zayas Island was ahead and on the port bow.

Q. What do you mean by that?

The Court: He has already explained that.

Mr. Ryan: I am asking him to be more specific.

The Court: Proceed. Ask him another question. He has already answered that one.

Mr. Ryan: All right.

Q. (By Mr. Ryan) Did you or did you not testify on June 21, 1925, before the United States Steamboat Inspectors, at Seattle, at the trial, as follows:

“Q. Did you see this land before the vessel struck Zayas Island?

A. Yes, sir.

Q. How did it bear?

A. It was on the port bow, sir.”

(Testimony of James B. Lawton.)

Did you or did you not so testify?

A. Yes; I believe I did. [2367]

Q. Well, on the port bow was exactly where it should have been if your course was correct, to go through Caamano Passage, wasn't it?

A. Not where she was at.

Q. If the current had not affected the "Denali" at all, so far as her course to be made good was concerned, down the mid-channel, Zayas Island would be on the port bow when you sighted it, wouldn't it?

A. Yes. We expected to pick it up on the port bow.

Q. Certainly. So that when you first sighted Zayas Island, and you saw it on the port bow, there was nothing to indicate to you that you were not on the very course you were intending to make, was there?

A. Yes, there was.

Q. There was?—State why there was, if Zayas Island was then on the port bow.

A. She was on the port bow, but too close to our ship's head.

Q. How close was Zayas Island to the ship's head?

A. I told you that the ship's head was practically in line with the eastern shore of Zayas Island. The rest of the island was on the port bow.

Q. You never mentioned that to the Steamboat Inspectors at either time you testified, did you?

A. I answered their questions.

(Testimony of James B. Lawton.)

Q. All you told them was that Zayas Island was on the port bow when you sighted it, isn't that right?

A. Yes.

Q. And that is where she should have been if you were making good the course you intended to make good at that time, [2368] isn't that so?

A. No; she should not have been right ahead.

Q. Did you ever before the time the "Denali" stranded have any doubt of the ship's actual position, where she was?

A. Are you asking me that question?

Q. Yes.

A. We knew approximately where she was at.

Q. Did you have any doubt of it at all, that you knew where the ship actually was at any time before the stranding occurred?

A. We didn't know exactly where we were at, which is impossible to know, with a strong current hitting the ship.

Q. Do you mean to say there was doubt in your mind with respect to where the "Denali" was before she actually stranded, that you had a doubt about it?

A. We had no doubt, no.

Q. You were *absolutely of* where the ship was at all times, were you, until she actually struck?

A. Not at all times, no.

Q. You were not?

A. No.

(Testimony of James B. Lawton.)

Q. Did it seem unsafe to you at any time before the ship actually stranded?

A. No; it did not.

Q. If you had had any doubt of the ship's position at any time before the stranding what would you have done?

A. Why, I would have done several things; I would have stopped the ship, or called the captain; or if I had any doubt I would have told the pilot.

Q. Was there any doubt in your mind that it was perfectly [2369] safe at all times, until the stranding actually occurred, for the ship to continue ahead at full speed ahead?

Mr. Long: May I have that question? I didn't get the first part of it. (Last question read.)

A. No; there wasn't any doubt in my mind.

Q. The first uncertainty that occurred was right after the stranding, right at the moment of striking the reef, isn't that so, so far as you were concerned?

A. Well, the first was when we actually hit the reef.

Q. Yes, when you actually hit the reef; the first time any doubt or uncertainty arose in your mind at all?

A. The ship appeared to us to be right in the middle of the Passage, and we thought we were all clear. We had no reasons to think otherwise.

Q. All right. Was or was not Pilot Obert on the bridge of the "Denali" in an advisory capacity to you as the third made on watch?

(Testimony of James B. Lawton.)

A. He was on the bridge as the pilot, as a licensed member of the crew.

Q. Answer the question, please, yes or no.

A. And on our certain watch he was in full charge.

Q. He was not in an advisory capacity to you, is that right?

A. I do not quite understand the meaning of your question.

Q. Now, this stranding occurred in British Columbia territorial waters, didn't it?

A. Yes; it did.

Q. And Pilot Obert is not licensed as a pilot in British Columbia territorial waters, is he?

A. They do not require any pilot's license in British Columbia waters. [2370]

Q. Answer that question yes or no.

A. We do not have any license, so we couldn't have.

Q. He has not any license, has he?

A. They do not issue them for those waters.

Q. And you knew he had no license for those waters, didn't you, British Columbia territorial waters, as a pilot?

A. Yes. If they do not have no license for those waters—I knew he didn't have any.

Q. Did you or did you not testify before the United States Steamboat Inspectors, on June 21, 1935, at the trial, as follows, page 9?

“Q. He was pilot?

A. Yes, sir.

(Testimony of James B. Lawton.)

Q. Where are these waters; are they in British Columbia?

A. Yes, sir.

Q. You know that a pilot of Southeastern Alaska has no jurisdiction in British Columbia?

A. Yes, sir.

Q. Then he was only on that bridge with you in an advisory capacity?

A. Yes, sir.

Q. You seem to have a great deal of responsibility in this matter, too.

A. Yes, sir."

Did you or did you not so testify under oath?

A. Yes; I believe I did.

Q. Did Pilot Obert keep you informed, and discuss with you the course that he was going to steer, and was steering?

A. We discussed most things concerning our watch, from time [2371] to time.

Q. Answer that question yes or no, then explain it, if you wish.

A. Will you please read that again? (Last question and answer read.)

The Court: The Court rules that is a sufficient answer. Ask him another question.

Mr. Ryan: All right.

Q. (By Mr. Ryan) When the stranding occurred what was the visibility?

A. All around the horizon, do you mean?—Back of the ship?

(Testimony of James B. Lawton.)

Q. Just give us the visibility at the time of the stranding, as you observed it.

A. At the time of the stranding, or shortly before, I saw Tree Point Light, which is 14 or 15 miles away. Zayas Island had a line of mist along the beach, and the edges of the trees; and the south end of Dundas Island had a long haze hanging on it. The visibility ahead was good. I didn't pay much attention to the visibility astern at the time.

Q. How was the visibility at the time of stranding, right ahead?

A. The visibility right ahead was good.

Q. Did you or did you not testify on May 24, 1935, under oath, before the United States Steamboat Inspectors, at the investigation of this stranding, as follows:

“Q. When this accident happened, what was the visibility?

A. The visibility was good in some spots, and not quite so good in others.

Q. How was it right ahead? [2372]

A. Hazy on both sides.”

Did you or did you not so testify, under oath?

A. I believe there is a slight mistake in that.

Q. Did you or did you not so testify?

A. Well, read the question again, please. (Question read.) I do not believe I said anything there about the visibility right ahead. I said it was hazy

(Testimony of James B. Lawton.)

on both sides, which I tried to describe a moment ago to you.

Q. You deny, then, that you testified as I have read it to you?

A. No; I do not deny it.

Q. Well, the question that was asked you was:

“Q. How was it right ahead?”

A. Hazy on both sides.”

Did you or did you not so testify on May 24, 1935, before the Steamboat Inspectors, when you were under oath?

A. I cannot remember making that exact statement.

Q. If you did so testify was that true or false, in fact?

A. It was true that there was haze on both beaches.

Q. Will you answer the question yes or no.

Mr. Long: I submit, Your Honor, the witness has answered to the best of his ability.

The Court: No; the objection is overruled.

A. Please read it again. (Question read). The question was, how was the visibility right ahead?

Q. Yes; and your answer was “Hazy on both sides.” Did you or did you not so testify under oath on May 24, 1935, before the United States Steamboat Inspectors?

A. I am quite sure I testified there was haze on both sides, on Zayas Island on one side and Dundas Island on the [2373] other side.

(Testimony of James B. Lawton.)

Q. You deny, then, that you testified that there was haze on both sides, in answer to that question as to how the visibility was right ahead of you?

A. No; I do not deny that.

Q. After you arrived back here in Seattle, after the stranding, did you have any conversation with anyone with reference to the circumstances of this stranding, before you went up to this investigation on May 24, 1935?

Mr. Long: I object to that as being repetition. The witness went all over that at the beginning of this examination.

The Court: The objection is sustained.

Mr. Ryan: All right.

Q. (By Mr. Ryan) Now, this investigation was on May 24, 1935, at which you testified, wasn't it, before the Steamboat Inspectors?

A. I do not remember the date.

Q. Didn't you on May 23, 1935, in company with Capt. Healy, prepare a statement of the circumstances of this stranding, and swear to it before a Notary Public?

A. I do not remember of that incident.

Q. Did you sign the protest that was extended under oath by Capt. Healy, with reference to this stranding on May 23, 1935?

A. The protest?

Q. Yes.

A. I do not recall of ever hearing of any protest.

(Testimony of James B. Lawton.)

Q. You did not sign the protest?

A. I cannot recall that I did. [2374]

Q. Do you deny that you did sign it?

A. I don't remember.

Mr. Ryan: Is the Notary Public in court? He was here a few minutes ago.

Mr. Long: Produce your original protest and see if his signature is on it.

Mr. Ryan: You have the original protest, or your agent has it. His signature is on it, I will tell you that right now.

Mr. Long: I do not know. I have not seen it.

Q. (By Mr. Ryan) Do you deny you signed the written protest on May 23, 1935, in company with Capt. Healy, of the "Denali", with reference to this stranding, here in Seattle?

A. Explain the protest, please.

Q. It is a statement under oath of the circumstances of the stranding, signed by the captain, and I am informed, by yourself.

Mr. Long: I demand that it be produced so that we can see if there is any inconsistency in it. I do not know if there is any inconsistency.

The Witness: I would like to look at it.

The Court: The record will show the demand, and the witness may answer, if he can.

The Witness: I would rather see the statement before I answer.

Q. (By Mr. Ryan) Did you make any statement on May 23, 1935, before any Notary Public, under oath?

(Testimony of James B. Lawton.)

A. I do not recall right now whether I did or not. I don't remember. [2375]

Q. You do not deny that you did?

A. I say that I do not recall.

Mr. Long: If Your Honor please, I object to this.

The Court: Very well. Proceed.

Mr. Ryan: I want to lay a foundation for impeaching the witness.

Q. (By Mr. Ryan) What allowance was made for deviation, if any, in setting the course from the fix off Triple Island Light, up through Caamano Passage?

A. There was no allowance at all made for deviation.

Q. What deviation was there on the compasses of the "Denali" on a heading of North $\frac{3}{4}$ West, if you know?

A. Well, I don't know exactly, but it was less than a degree.

Q. You never ascertained that yourself, did you?

A. I had the book right there; I could look at it any time I wanted to, as all of us did.

Q. But you never ascertained it yourself, did you, what the deviation was?

A. You mean look and see?

Q. Yes; take an azimuth, or anything like that.

A. Oh, yes, I did.

(Testimony of James B. Lawton.)

Q. What?

A. Yes, I did.

Q. On a course of North $\frac{3}{4}$ West?

A. Oh, I didn't say that. I said I took an azimuth.

Q. But not on that heading, ever, did you?

A. I don't recall which heading it was on.

Q. Well, the ship was never on that heading from the time she left Seattle until she got to the point of stranding, [2376] so far as you know of your own knowledge, was she?

A. I don't know whether she was on that heading.

Q. Or anywhere near that heading, so far as you know, of your own knowledge?

A. Not on my particular watch.

Q. What allowance was made for tide or current, or anything else, in setting the course from the fix off Triple Island Light, up through Caamano Passage, on the night of the stranding?

The Court: If you know.

Q. If you know.

A. $\frac{3}{8}$ of a point.

Q. What was that allowance for?

A. Current.

Q. What force and direction of current did you expect in setting that course?

A. The current and tides in that general vicinity—

(Testimony of James B. Lawton.)

Q. (Interposing) No; what did you expect there?

Mr. Long: Let him answer the question. He was about to get to it.

The Witness: The current and tides in that general vicinity are not to be depended on. The mariners and pilots going to Alaska know that.

Q. Now, read the question; and I will ask you to answer it. (Question read as follows:

“Q. What force and direction of current did you expect in setting that course?”

The Court: What particular course, etc.?

The Witness: Well, I did not set the course, Your Honor. The pilot was navigating the ship. I couldn't say. [2377] He had no data that he truly relied on to get the exact force of the tide.

The Court: Ask him another question.

Q. (By Mr. Ryan) You made no effort to ascertain what the force or direction of the tide or current was in Caamano Passage, between Triple Island and the reef that you knew you would encounter on setting the course from the fix off Triple Island up through Caamano Passage, is that right?

A. Well, they had the high tide for——

Q. (Interposing) Answer yes or no, and then explain, in each instance.

A. Please read that again.

The Court: Hereafter, you keep your mind on

(Testimony of James B. Lawton.)

the question asked, and let other present appropriately take care of the objections, etc.

The Witness: All right. (Question read.)
No; I did not make any. The pilot was navigating the ship, not me.

Q. (By Mr. Ryan) Do you know what force and direction of tide or current was reasonably to be expected by a navigator setting a course from the fix off Triple Island that you had, up through Caamano Passage, on that night of the stranding?

A. We had no——

The Court: No, this is a question of what you knew as to what to expect with reference to that subject at that time—answer yes or no.

The Witness: I didn't quite get that question.

The Court: All right; read the question. (Question [2378] read.)

The Witness: No; I didn't know.

Q. (By Mr. Ryan) Do you know it now?

A. No. Nobody else does, neither.

The Court: Ask him another question.

Q. Do you know what force and direction of current are shown on the United States Government and British Admiralty charts in that area, between Triple Island Light and Caamano Passage?

A. Yes; I have looked at the charts; looked at the arrows on the charts.

Q. When did you look at the arrows on the charts for the first time?

A. That night, you mean?

(Testimony of James B. Lawton.)

Q. Any time. When did you first look at them on that particular chart that you were using?

A. Oh, I cannot recall when I first looked at them.

Q. Did you look at them on that night?

A. Yes; I did.

Q. Did you figure out from the current diagram on that chart what the force and direction of the tidal current was that should be expected by a mariner navigating a ship from that fix off Triple Island, up through Caamano Passage, on that night?

A. No; I did not.

Q. Why didn't you?

A. Because the force of the current in those waters is not known.

Mr. Long: I did not get that last answer. (Answer read.) [2379]

Q. How about the direction of the current in those waters?

The Court: Speak up promptly.

A. It cannot be relied on.

Q. Do you know whether the pilot in allowing for current, for tidal current, to be expected on setting that course from the fix off Triple Island, up through Caamano Passage made the allowance which is stated on the chart in the form of the arrows and current diagrams?

A. I do not know.

Q. Do you know from what source was obtained the information for the navigating officer with re-

(Testimony of James B. Lawton.)

spect to expected force and direction of tidal current that would be encountered on sailing from that fix off Triple Island, up through Caamano Passage, on the night of the stranding?

The Court: I will ask the reporter to read that question. I think there was a word omitted from it. (Last question read.)

The Court: The reporter may insert in the question, after the words "obtained the information"—insert the words "for the navigating officer"—I think that will make the question complete.

A. Through local knowledge.

Q. You know that that was the source that he was taking it from?

A. Mostly.

Q. How do you know he was taking it from that source?

A. Because we had talked about the tide on the watch.

Q. Oh, you did?— All right. What did you say to Pilot Obert about the tide on that watch?

A. Well, the pilot said he was going to allow so much for the [2380] tide, which he did. Naturally, I knew that he was using his own local knowledge of those waters for the current and tide effects, and the direction.

Q. What allowance did he tell you he was making for expected force and direction of tidal current on that night, from Triple Island up

(Testimony of James B. Lawton.)

through Caamano Passage, on the night of the stranding?

A. I don't remember just what he said.

Q. Give us your best recollection.

A. Evidently $\frac{3}{8}$ of a point.

Q. Do you know what is meant by force and direction of tidal current?

A. Yes, sir.

Q. Didn't he mention the force and direction of tidal current in those waters?

A. He mentioned that on that tide there was a large run-out, which would affect a ship going through those waters, more than a smaller run-out.

Q. What tide was the ship on, on setting that fix off Triple island, preparatory to going up through Caamano Passage?

A. Well, it was on a flood tide, by a reference station that was quite a few miles away from the position that we were in.

Q. What was the tide at the place where the "Denali" was on arriving at that fix off Triple Island Light?

A. What was the tide?

Q. Yes, at that time, right where the ship was.

A. You mean according to the tide books?

Q. Actually what it was, if you know.

A. I cannot recall that. [2381]

Q. Do you know what it was according to the tide books?

A. Yes.

(Testimony of James B. Lawton.)

Q. What was it, when the "Denali" was at the fix off Triple Island—when it had reached that point?

A. It was at flood tide.

Q. At flood tide?

A. According to a reference station at a place quite a few miles away, but that didn't necessarily mean right where we were at.

Q. Do you mean to say that in your opinion the tide tables are wrong?

A. No; I do not say that.

Q. What was the time of high water at Barren Island that night?

A. I cannot recall that.

Q. Did you ever make any effort to ascertain it?

A. I cannot recall that, either.

Q. On what do you base your opinion that the current diagrams that are on the United States Government, and Canadian Government large scale charts, and the tidal current arrows for flood and ebb tide, and the hourly statements of direction and force, throughout the whole 24 hours, are wrong?

A. Part of the year, some season of the year, the tides most likely run as predicted on the charts, but at other times of the year they are not reliable.

The Court: Counsel wanted to know what the source of the information is; how did you find out?

The Witness: I found it out by associating with many men that have sailed up through that passage

(Testimony of James B. Lawton.)

for years—half their life—it is a well known fact on that part of the run. [2382]

Q. This was your first trip as an officer on a ship, wasn't it—on this ship which stranded?

A. Yes, sir.

Q. So that your information is just based on hearsay, isn't it?

Mr. Long: If Your Honor please, I submit that the witness has answered the question fully as to where he had that information.

The Court: That objection is overruled.

A. Well, I have made several hundred trips to Alaska.

Q. (By Mr. Ryan) Well, give me the name of the ship and the date on which you last went through Caamano Passage before this stranding on May 19, 1935, of the "Denali".

A. I cannot do that. I have been on lots of ships. I have been on most of the Alaska Steamship Line ships. I don't recall the exact or specific ships.

Q. How many years prior to this stranding, on May 19, 1935, was it that you were last on a ship which went through Caamano Passage?

A. I cannot even recall that. It may have been the summer before or maybe it was the summer before that.

Q. Can you give me the name of the ship that you were on that you last went through there before the time of the stranding?

A. No, I cannot.

(Testimony of James B. Lawton.)

Q. Now, you have testified that Pilot Obert got this information about expected tidal currents from local knowledge. That is right, isn't it?

A. Why, yes. [2383]

Q. Now, as a matter of fact, wasn't Pilot Obert looking at the American and Canadian tide tables and making computations from then at the time of setting the course of this vessel from this fix off Triple Island Light up through Caamano Passage?

A. Well, if he did it, I didn't notice him doing it.

Q. All right. You did not?

A. No.

Q. All right. Did you or did you not testify before the United States Steamboat Inspectors at the trial on June 21, 1935, at Seattle, as follows:

“Q. When you were on watch”—that is at page 7,—

“Q. When you were on watch did Mr. Obert mention anything about tide tables or tides?

A. Yes, sir.

Q. What did he say?

A. American tide and Canadian tide.

Q. Did you see him go to the chart table and do anything, figuring or calculating?

A. Yes, sir.

Q. Do you know what he was doing?

A. Checking up”.

Did you or did you not so testify?

(Witness does not answer)

(Testimony of James B. Lawton.)

The Court: Say whether you did or whether you did not, if you recall.

A. Yes, I believe I did testify to that.

The Court: Ask him another question. [2384]

Mr. Ryan: All right.

Q. (By Mr. Ryan) Did you or did you not testify on June 21—I will strike that out. Have you ever read the tide tables about Caamano Passage?

Mr. Long: The tide table?

Mr. Ryan: Yes.

A. Yes, I have.

Q. (By Mr. Ryan) When did you read them for the first time?

A. Well, that is something that I cannot recall.

Q. Well, give us your best recollection.

A. Well, I cannot even do that.

Q. Had you ever read them before, say, July, 1935?

A. Yes.

Q. The tide tables about Caamano Passage?

A. I don't know particularly about Caamano Passage, but I have read the tide tables before that.

Q. Do you know what it said in the tide tables about the tides that are to be expected in the vicinity of Caamano Passage?

A. As I recall, I recall reading something.

Q. What did the tide tables say?

A. Oh, I don't recall just what they said. If you will look at page 72 of the Canadian Tide Tables, you can see.

(Testimony of James B. Lawton.)

Q. But whatever they say, say right or wrong, which was it?

Mr. Long: I submit the witness says that he does not remember what it said. Show him the table.

The Court: Well, the objection is overruled.

Mr. Long: That is a very unfair way of cross examining.

The Court: If you know you can answer that question. [2385]

A. Will you read it again?

The Court: Read it.

(Question read as follows: "But whatever they say, say right or wrong, which was it?")

Q. (By Mr. Ryan) Which was it, right or wrong, what those tide tables say about Caamano Passage and the waters in the vicinity of Caamano Passage?

(Witness does not answer)

The Court: Answer the question.

A. I cannot answer the question.

Q. (By Mr. Ryan) Did you hear this conversation on the bridge between Pilot Obert and the second mate about midnight of the night of the stranding with respect to Triple Island Light?

A. I don't recall that I did, no.

Q. You don't recall any such conversation, is that right?

A. No, I don't.

(Testimony of James B. Lawton.)

Q. Well, you were on watch at the same time or just before—you went on watch at the same time or just before Obert did, didn't you?

A. Practically the same time, I guess.

Q. Was the second mate there?

A. Yes, sir.

Q. And you relieved him?

A. Yes.

Q. And what did the second mate tell you at that time? Give us the substance of everything that he said, and everything that you said to him.

A. Well, he explained—he showed me Triple Island Light, which was forward of the beam a little, and he told me [2386] that he had taken a four point bearing and taken a log, and noted the time, and Triple Island Light was four points, and he showed me where he had entered it in the log book.

Q. Is that all that he said?

A. No. We went in and looked—I looked at the large scale chart of Caamano Passage. That is about all that I recall that he said.

Q. Did he tell you what force and direction of current he had allowed in setting the course on which the ship was at 10:49, and on which he was continuing at the time that you went on watch?

A. No, he did not.

Q. Did you ask him?

A. No, I don't recall that I asked him.

(Testimony of James B. Lawton.)

Q. Did the second officer tell you what deviation, if any, had been allowed for in setting that course on which the ship was steering at the time that you went on watch?

A. No, I don't recall that.

Q. Did you ask him?

A. No, I did not.

Q. Now, when you take a bow and beam bearing on a ship, what is the usual practice in making entries in the log book? How do you enter that? Just tell us how you make any entry with reference to any bow and beam bearing.

A. How I make an entry with reference to a bow and beam bearing in the log book?

Q. Yes. [2387]

A. You mean a four point bearing entered in the log, too?

Q. Yes. What was the usual practice on the "Denali"?

A. Well, we take a Hanson bearing board——

Q. (Interposing) I don't meant how you take it, but what bearing do you make in the log book under the usual practice or what entry is made in the log book under the usual practice on the Alaska Steamship vessels?

A. They enter it differently. They enter it in the deck log book.

Q. Yes, in the deck log book, what entry is made when a four point bearing has been taken?

(Testimony of James B. Lawton.)

A. Well, when it is a four point bearing, we enter the time down in the log book; the course; and enter the log.

Q. Did you take a four point bearing from the time that the "Denali" left Seattle until she arrived at the point of stranding?

A. Yes, I did.

Q. I show you the log book and I will ask you to show me where you have made one of those entries with reference to a four point bearing.

A. I took one off of Cape Beal.

Q. You took one off of Cape Beal?

A. Yes, sir.

Q. That is this entry at 12:50 A. M. on May 17, 1935, is that right?

A. Yes, sir.

Q. Now, all that you entered there is this, isn't it, "12:50 A. M. Cape Beal; 6½ miles; time on course, 42 minutes; pilot house compass West 7/8 North; Bridge [2388] compass West 5/8 North; distance by log 132.7; tide, ebb; wind, west. Weather remarks, raining".

Is that right?

A. Yes, sir.

Q. Is that your total entry?

A. Yes, sir.

Q. You didn't make any entry of a bow bearing?

A. No, I did not.

(Testimony of James B. Lawton.)

Q. Can you show me any entry by you, or by any other officer on the ship of a bow bearing?

A. That is not necessary.

Q. (Continuing) In connection with a four point bearing.

A. It is not necessary to enter it in your log book.

Q. (Continuing) On that voyage.

A. It is not necessary to enter it in your log book.

Q. Well, will you show me one, if you can find it? And you might mention, as you go through, every point bearing that you see that you took, or that you know what taken on that voyage.

A. Well, I will have to start over again.

The Court: No, do not do that. You have been looking for it. Keep on from where you are.

Mr. Long: If Your Honor please, I think that counsel's question is that he go through the book and point out all of them. There are many of them in that book.

The Court: The main question was to pick out those that he entered.

The Witness: Four point bearings?

Q. (By Mr. Ryan) The bow part of a four point bearing. See [2389] if you can find any entry in there.

A. No, I cannot.

Q. It is not the usual practice to enter it, is it?

A. Sometimes we do and sometimes we don't.